

City of Miami Beach - City Commission Meeting
Commission Chambers, 3rd Floor, City Hall
1700 Convention Center Drive
May 18, 2005

Mayor David Dermer
Vice-Mayor Luis R. Garcia, Jr.
Commissioner Matti Herrera Bower
Commissioner Simon Cruz
Commissioner Saul Gross
Commissioner Jose Smith
Commissioner Richard L. Steinberg

City Manager Jorge M. Gonzalez
City Attorney Murray H. Dubbin
City Clerk Robert E. Parcher

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ATTENTION ALL LOBBYISTS

Chapter 2, Article VII, Division 3 of the City Code of Miami Beach entitled "Lobbyists" requires the registration of all lobbyists with the City Clerk prior to engaging in any lobbying activity with the City Commission, any City Board or Committee, or any personnel as defined in the subject Code sections. Copies of the City Code sections on lobbyists laws are available in the City Clerk's office. Questions regarding the provisions of the Ordinance should be directed to the Office of the City Attorney.

Special note: In order to ensure adequate public consideration, if necessary, the Mayor and City Commission may move any Commission item to the alternate meeting date.

Call to Order - 9:00 a.m.
Inspirational Message, Pledge of Allegiance
Requests for Additions, Withdrawals, and Deferrals

Presentations and Awards

PA Presentations and Awards

Consent Agenda

C2 Competitive Bid Reports
C4 Commission Committee Assignments
C6 Commission Committee Reports
C7 Resolutions

Regular Agenda

R2 Competitive Bid Reports
R5 Ordinances
R6 Commission Committee Reports
R7 Resolutions
R9 New Business and Commission Requests
R10 City Attorney Reports

Reports and Informational Items

Miami Beach



2003

*"We are committed to providing excellent public service
and safety to all who live, work, and play in our vibrant, tropical, historic community."*

PA - Presentations and Awards

- PA1 Certificate Of Appreciation To Be Presented To Steve Davidson And The Florida Moving Image Archive, For Their Efforts To Preserve The Film And Video Images Which Document The History And Culture Of Miami Beach. (Page 2)
(City Clerk's Office)
(Deferred from April 20, 2005)

- PA2 Certificate Of Appreciation To Be Presented To Wendy Raphaely, Director Of Hands On Miami, For Exemplary Contribution To The Community During National Youth Service Weekend
(Requested by Vice-Mayor Luis R. Garcia)

- PA3 Proclamation To Be Presented Declaring National Emergency Medical Services Week.
(Requested by Mayor David Dermer)

- PA4 Proclamation To Be Presented Declaring Public Works Week.
(Public Works)

- PA5 Proclamation To Be Presented Declaring May 7-15, 2005 As "National Tourism Week" In The City Of Miami Beach.
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- PA6 Certificate Of Appreciation To Be Presented To Pola Reyburd For Serving On The Art In Public Places Committee.
(Requested by Commissioner Matti Herrera Bower)

- PA7 Certificate Of Appreciation To Be Presented To Michael Aller, For His Devotion, Support And Participation Each Year At The Women Worth Knowing Event.
(Requested by Mayor David Dermer)

- PA8 Certificates Of Appreciation To Be Presented To The Crime Prevention Unit Of The Miami Beach Police Department.
(Police Department)

CONSENT AGENDA

Action:
Moved:
Seconded:
Vote:

C4 - Commission Committee Assignments

- C4A Referral To The Finance And Citywide Projects Committee Of A Proposed Amendment To The Agreement Between The City Of Miami Beach And Edwards And Kelsey, Inc. For The Planning And Design Of The Venetian Islands Neighborhood Improvement Project To Provide For Additional Professional Services. (Page 5)
(Capital Improvement Projects)
- C4B Referral To The Finance And Citywide Projects Committee Of A Proposed Amendment To The City's Agreement With Glattig Jackson Kercher Anglin Lopez Rinehart For The Planning And Design Of The West Avenue Neighborhood Right Of Way Improvement Project To Provide For Additional Professional Services In The Amount Of \$134,009 Required To Implement The Project.
(Page 7)
(Capital Improvement Projects)
- C4C A Referral To The Finance And Citywide Projects Committee – Discussion Regarding The Status Of The 1996 Swap-Option Agreement On The Series 1994 Taxable Pension Special Obligation Bonds Between The City Of Miami Beach And Morgan Stanley Capital Services, Inc. (Page 11)
(Finance Department)
- C4D Referral To The Finance And Citywide Projects Committee - Discussion Regarding Refunding Of The Miami Beach Redevelopment Agency Tax Increment Revenue Bonds, Series 1993 And 1996.
(Page 15)
(Finance Department)
- C4E Referral To The Neighborhood/Community Affairs Committee - Discussion On Amended Noise Ordinance. (Page 17)
(City Manager's Office)
- C4F Referral To The Planning Board - An Ordinance To Provide That Appeals From The Historic Preservation Board, The Board Of Adjustment And The Planning Board, Go To The City Commission Before Taken To A Special Master Or Circuit Court. (Page 19)
(Requested by Commissioner Simon Cruz)

C6 - Commission Committee Reports

- C6A Report Of The Finance And Citywide Projects Committee Meeting Of April 8, 2005: 1) Discussion Regarding The City's Plans For Improvements To Streets Not Covered By The City's General Obligation Bond; 2) Status Report Regarding Miami-Dade County General Obligation Bond Issue - City Of Miami Beach Projects; 3) Capital Improvement Projects - Processes, Funding, And Schedules; And 4) Discussion Regarding A Proposed Amendment To EDAW's Agreement With The City Of Miami Beach For The Planning And Design Of The Flamingo Neighborhood Right Of Way Improvement Project. (Page 22)
- C6B Report Of The Neighborhood/Community Affairs Committee Meeting Of April 26, 2005: 1) Discussion Regarding An Ordinance Amending Miami Beach City Code Chapter 2, Article VII, Division 5 Thereof Entitled "Campaign Finance Reform" By Amending Code Sections 2-487 Entitled "Prohibited Campaign Contributions By Vendors," 2-488 Entitled "Prohibited Campaign Contributions By Lobbyists On Procurement Issues," Section 2-489 Entitled "Prohibited Campaign Contributions By Real Estate Developers," And Section 2-490 Entitled "Prohibited Campaign Contributions By Lobbyists On Real Estate Development Issues," By Adding Language Providing That The 12 Month Period In Which A Prohibited Donor Of A Campaign Contribution Is Disqualified From Certain Specified Associations With The City Shall Commence Upon A Final Finding Of Violation, Or If Applicable, Upon Miami Beach City Commission Action On A Waiver Request; Providing For Repealer, Severability, Codification, And An Effective Date; 2) Discussion Regarding An Ordinance Amending Chapter 70 Of The Code Of The City Of Miami Beach, Entitled "Miscellaneous Offenses," To Create Article VI, To Be Entitled "Sex Offenders" And Creating Section 70-400, Entitled "Sex Offender Residency Prohibition," Providing For A Prohibition From Sex Offenders Convicted Of Crimes Under Certain Florida Statutes From Living Within 2500 Feet Of Specified Locations Within The City Of Miami Beach; Providing For Codification, Repealer, Severability, And An Effective Date; 3) Discussion Regarding Automated External Defibrillators; And 4) Discussion Regarding Recommendation From The Art In Public Places Committee To Amend The Naming Of Public Facilities And Establishment Of Monuments Or Memorials Ordinance, Specifically Regarding Procedures For Reviewing Proposals And Requests For Monuments And Memorials. (Page 44)
- C6C Report Of The Finance And Citywide Projects Committee Meeting Of April 27, 2005: 1) Discussion Regarding The City Of Miami Beach And Boucher Brothers Miami Beach, LLC Concession Agreement; 2) Discussion Regarding The Miami Beach Marina Submerged Land Lease; And 3) Discussion Regarding An Ordinance Relating To Watercraft; Amending Chapter 66 By Enacting A New Section 66-8 Regulating The Anchoring And Mooring Of Watercraft Within The Boundaries Of The City; Regulating Anchoring Or Mooring For Nonnavigational, Live-Aboard, And Other Purposes; Defining Nonnavigational Purposes And Exceptions, And Live-Aboard; Establishing A Penalty For Violation; Providing For Repealer Of All Conflicting Ordinances, Rules And Regulations; Providing For Codification And A Severance Clause; And Setting An Effective Date. (Page 74)

C6 - Commission Committee Reports (Continued)

- C6D Report Of The General Obligation Bond Oversight Committee Meeting Of May 2, 2005: **1)** Contingency Report; **2)** Discussion Items: A) October 10, 2005 Committee Meeting; B) Discussion Regarding Community Meetings In April - Flamingo/Lummus Neighborhood (Drexel Avenue) Community Design Review Meeting (CDRM); C) Community Outreach Sub-Committee Report; D) Encroachment Policy; **3)** Project Status Report: A) Fire Station No. 2; B) Fire Station No. 4; C) Normandy Isle Park And Pool; And **4)** Informational Items: A) Updated Calendar Of Scheduled Community Meetings; B) Updated Committee Membership; C) April 8, 2005 CIP Office Presentation To Finance And Citywide Projects Committee; D) EDAW Flamingo Lummus Additional Services; E) Normandy Isle Park; And F) Normandy Isle Pool. (Page 80)
- C6E Report Of The Land Use And Development Committee Meeting Of May 9, 2005: **1)** Discussion Regarding The Zoning Of Religious Institutions In The RS-4 District; And **2)** Discussion Regarding An Ordinance For Evaluation Of Older Buildings Recommended By The Mayor's Blue Ribbon Panel On Structural Integrity Of The Building; And **3)** Discussion Regarding An Ordinance Amending The Land Development Regulations Of The City, By Amending Chapter 142, "Zoning Districts And Regulations," Article II, "District Regulations," Division 2, "RS-1, RS-2, RS-3, RS-4 Single-Family Residential Districts," By Creating Section 142-109, "Development Regulations For Single-Family Lots Abutting A GC Golf Course District," Providing For Legal, Non-Conforming Status For Existing Structures, Rear Setbacks And Encroachments Into Easement Areas; Providing For Repealer, Severability, Codification And An Effective Date. (Page 92)

C7 - Resolutions

- C7A A Resolution Authorizing The Mayor And City Clerk To Execute A First Amendment To That Certain Lease Agreement By And Between The City Of Miami Beach And UNIDAD Of Miami Beach, Inc., Dated November 8, 2000, For A Portion Of The City-Owned South Shore Community Center, Located At 833 - 6th Street, Miami Beach, Florida. (Page 95)
(Asset Management)
- C7B A Resolution Retroactively Approving A Sublease By And Between Jacques Auger Design Associates, Inc. (The City's Lessee) And Internal Intelligence Service, Inc. (Sublessee) For The Use Of Approximately Six Hundred Twenty-Seven (627) Square Feet Of Office Space, On The 6th Floor Of Historic City Hall, Located At 1130 Washington Avenue, Miami Beach, Florida. (Page 104)
(Asset Management)
- C7C A Resolution Authorizing The Mayor And City Clerk, To Execute An Amended And Restated Concession Agreement By And Between The City Of Miami Beach And Boucher Brothers Miami Beach, LLC, For The Management And Operation Of Beachfront Concessions On The Beaches Seaward Of Lummus Park, Ocean Terrace And North Shore Open Space Park, Miami Beach, Florida. (Page 137)
(Asset Management)

C7 - Resolutions (Continued)

- C7D A Resolution, Authorizing The Administration To Issue Request For Qualifications (RFQ) No. 22-04/05 For Professional Building Inspection And Plans Review Services In Various Disciplines On An "As-Needed Basis" And An "On-Going Basis," For The Building Department, Whenever There Are Vacancies Of Inspector And Plans Review Positions Until Such Time That Vacancies Are Filled With Permanent Staff; Further, Extending The Term Of The Existing Agreement With The Firm, M.T. Causley, Inc. Dated March 1, 2004 Until The New Contracts Are Awarded. (Page 238)
(Building Department)
- C7E A Resolution Authorizing An Intergovernmental Agreement For Fleet Maintenance And Repair Services Between The Village Of Key Biscayne, Florida, And The City Of Miami Beach, Florida. (Page 249)
(Fleet Management)
- C7F A Resolution Authorizing The Issuance Of A Request For Proposals (RFP) To Determine If It Is In The City's Best Economic Interest To Award A Contract For Dry Cleaning And Laundering Services For City Of Miami Beach Uniformed Employees In Lieu Of Paying Employees A Cleaning Allowance. (Page 258)
(Labor Relations)
- C7G A Resolution Setting A Preliminary Public Hearing For June 8, 2005, Pursuant To Code Section 118-705(B)(1), "Procedures For The Adoption Of Specific NCD Overlay Districts," In Order To Consider The Merits Of A Proposed La Gorce Island Neighborhood Conservation District. (Page 263)
(Planning Department)
- C7H A Resolution Authorizing The Mayor Or His Designee, And The City Clerk To Execute A Professional Services Agreement Between The City Of Miami Beach, Florida And The State Attorney's Office For The Eleventh Judicial Circuit In And For Miami-Dade County, Florida For Criminal Prosecution Of Local Code And Ordinance Violations. (Page 272)
(Police Department)
- C7I A Resolution Authorizing The Appropriation Of \$205,000 From The Miami Beach Share Of The County's Fiscal Year 2004-05 Peoples' Transportation Plan (PTP) Funds, For The Painting Of Approximately Seventy (70) Miami Beach Traffic Signal Posts And Mast Arms. (Page 281)
(Public Works)

C7 - Resolutions (Continued)

- C7J A Resolution Authorizing The Mayor And City Clerk To Execute A Professional Services Agreement With McMahon Associates, Inc., In The Amount Of \$76,015.00, For The Preparation Of Phase I - Conceptual Plan Report For A Sixteenth Street Operational Improvements And Enhancement Project; Utilizing \$75,000 In Funds Appropriated For The Purpose By Resolution No. 2004-25589, Dated June 9, 2004; And Pursuant To Resolution No. 2005-25784, Dated January 27, 2005, Which Authorized Contract Negotiations; And Further Authorizing The Appropriation Of An Additional \$1,015 In Concurrency Mitigation / South Beach Funds To Cover The Negotiated Contract Price.
(Page 288)
(Public Works)
- C7K A Resolution Approving Subject To Final Approval Of Same By The Authorized Officials In Miami-Dade County, The Proposed Final Plat Of "Meadowood Gardens," A Replat Of Lots 1 Through 12, Block 1 And Tracts "A-9," "B-9" And "C-9" Of Lindisfarne On Fisher Island Section 9, As Recorded In Plat Book 149, Page 86 Of The Public Records Of Miami-Dade County, Florida, Together With A Portion Of Unsubdivided Section 10, Township 54 South, Range 42 East, City Of Miami Beach, Miami-Dade County Florida.
(Page 313)
(Public Works)
- C7L A Resolution Approving The Proposed Final Plat Of The "Apogee," Being A Portion Of The Northwest ¼ Of Section 10, Township 54 South, Range 42 East, City Of Miami Beach, Miami-Dade County Florida, And Authorizing The Appropriate City Officials To Execute The Plat On Behalf Of The City.
(Page 320)
(Public Works)
- C7M A Resolution Authorizing Appropriation Of \$406,250 From The Water And Sewer Revenue Series 2000 Bond Fund 424, For Construction And Maintenance Projects And Establishment Of Work Orders For The Firm Camp Dresser & McKee (CDM) To Conduct Citywide Water And Sewer Engineering Services Under Phase II (Task 5 - Engineering Studies, Investigation, Design And Analysis Of Estimated Costs) Of The Scope Of Services Listed in RFQ 35-01/02. (Page 329)
(Public Works)
- C7N A Resolution Authorizing The Mayor, Or His Designee, And The City Clerk To Execute A Mutual Aid Agreement With The City Of Fort Lauderdale, Florida, For The Purpose Of Coordinating Law Enforcement Planning, Operations, And Mutual Aid Benefit Between The City Of Miami Beach And The City Of Fort Lauderdale.
(Page 334)
(Police Department)

C7 - Resolutions (Continued)

- C7O Appointment Of Chief Special Master (Page 337)
1. A Resolution Accepting The Recommendation Of The Miami Beach City Manager And City Attorney, Pursuant To Section 30-36 Of The Code Of The City Of Miami Beach, Concerning The Appointment Of Jimmy L. Morales, Esquire, To Serve As Chief Special Master, Commencing May 30, 2005, And Ending December 31, 2005, Who Shall Be Authorized To Hold Hearings And Impose Fines, Liens And Other Non-Criminal Penalties Against Violators Of City And County Codes And Ordinances, And Shall Also Be Authorized To Appoint Such Other Special Masters As May Reasonably Be Required To Conduct The Subject Hearings; Incorporating All Other Matters Set Forth Within City Of Miami Beach City Code Chapter 30, Section 30-37(A) Concerning The Compensation And Duties Of The Chief Special Master.
 2. A Resolution Accepting The Recommendation Of The City Manager And City Attorney, Pursuant To Sections 30-36 And 102-356 Of The Code Of The City Of Miami Beach, Concerning The Appointment Of Jimmy L. Morales, Esquire, To Serve As Chief Special Master Pursuant To Chapter 30 Of The City Code And To Serve As "Designee" Pursuant To Section 102-356 Of The City Code, Commencing May 30, 2005, And Ending December 31, 2005, Who Shall Be Authorized To Hold Administrative Hearings Regarding Appeals From Citations For Violations Of City And County Code Codes And Ordinances, And Regarding Denials, Suspensions, And Revocations Of Occupational Licenses, Certificates Of Use And Permits As Provided By The City Code, And To Appoint Such Other Special Masters As May Reasonably Be Required To Conduct Such Hearings Pursuant To City Ordinances.
 3. A Resolution Accepting The Recommendation Of The City Manager And City Attorney Concerning The Compensation Of The Chief Special Master, Establishing A Base Rate Of Two Hundred And Fifty Dollars (\$250) Per Hour, To Be Paid To The Chief Special Master To Perform Administrative Duties, Capped At Five Thousand Dollars (\$5,000), And Further Provides That If The Chief Special Master Sits As One Of The Special Masters Hearing Cases, His Compensation Shall Be Two Hundred And Fifty Dollars (\$250) Per Hour, Capped At One Thousand Two Hundred And Fifty Dollars (\$1,250) Per Hearing Session.

(City Clerk's Office)

End of Consent Agenda

PA - Presentations and Awards

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(Police Department)

AGENDA ITEM PA1-8
DATE 5-18-05

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**C4
Comm. Committee
Assignments**

CITY OF MIAMI BEACH

CITY HALL 1700 CONVENTION CENTER DRIVE MIAMI BEACH, FLORIDA 33139
www.miamibeachfl.gov



COMMISSION MEMORANDUM

To: Mayor David Dermer and
Members of the City Commission

Date: May 18, 2005

From: Jorge M. Gonzalez
City Manager

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Subject: **REFERRAL TO THE FINANCE AND CITYWIDE PROJECTS COMMITTEE OF A PROPOSED AMENDMENT TO THE AGREEMENT BETWEEN THE CITY OF MIAMI BEACH AND EDWARDS AND KELSEY, INC. FOR THE PLANNING AND DESIGN OF THE VENETIAN ISLANDS NEIGHBORHOOD IMPROVEMENT PROJECT TO PROVIDE FOR ADDITIONAL PROFESSIONAL SERVICES.**

ADMINISTRATION RECOMMENDATION

Refer the item.

ANALYSIS

On November 21, 2002, the City executed an agreement with Edwards and Kelsey Inc. for the planning and design of the Flamingo Neighborhood Right of Way Improvement Project with a not-to-exceed fee of \$ 799,903. Amendments One (1), Two (2), Three (3) and Four (4) for, respectively, the attendance of the consultant at a design review board meeting (\$365), additional survey work within the Venetian Causeway (\$2,000), additional underground utility verification (\$ 24,750) and design of additional irrigation (\$ 5,090) were approved on 8/03/03 and 3/23/04 increasing the total contract value to \$832,108.

As work on the Project has continued, a need for a number of additional services has been identified. Original scopes of work were prepared for the various neighborhood consultants based upon input from the various Departments, such as the Planning and Public Works Departments. Underground utility infrastructure requirements were identified originally through the respective utility masterplans, which were further refined at the onset of the program via a series of meetings that were intended to identify those utilities that required replacement. As the planning and design phases progressed, field data collection and system evaluation activities identified the need for additional water mains to be replaced based upon anticipated system capacity requirements and end of useful life criteria. A water main replacement program was established with three priority levels; this effort took approximately 24 months to complete. Sufficient funding was determined to be available to replace all identified citywide Priority 1 (undersized lines that need to be increased in size to meet increased demand and fire safety supply requirements) and Priority 2 (galvanized iron lines that need to be replaced) water mains. However, funding shortfalls precluded the replacement of all but the most important Priority 3 (iron lines that need to be replaced because of extensive tuberculation) water mains.

In an effort to move the neighborhood improvement projects forward, detailed design activities proceeded on a parallel path to the water main replacement investigative effort. As a result, adjustments were required to the type, length and location of lines well into the

Agenda Item CYA

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design process. Originally, approximately 22,240 feet were identified to be replaced. Some of these were not included in the prioritized listing once it was completed. Other lines that had not been part of the original scope were identified to be included in the completed prioritized listing. Therefore, it became necessary to amend the original Agreement to provide neighborhood consultants with the requisite compensation to design, permit, and provide construction administration services for the additional work. As a result of these analyses, an additional 4,045 linear feet of water mains were identified to be replaced within the Venetian Islands Neighborhood Improvement Project boundaries.

In the original Agreement, the Scope for South Island Avenue called for a 7' sidewalk and a 6' swale. During the 60% Community Design Review Meeting (CDRM), the Community asked that the configuration of the sidewalk and swale be revised to a 6' sidewalk and a 7' swale. The Administration agreed to this change, and additional services are needed for the revision.

Also, the ~50% design documents that were provided to the Consultant from previous design efforts were based on a single stormwater pump station to be located at the northeast corner of Belle Isle Park, with discharge via one outfall. After reviewing the proposed design, evaluating the existing conditions and meeting with jurisdictional regulatory agencies, the Consultant established that the proposed pump station would require a greater capacity and would require relocation to the west to offer a more efficient connection point to two existing outfalls, which were deemed required to meet the City's Stormwater Master Plan Level of Service. This requires additional design services.

The Neighborhood ROW Improvement Program Manager, Hazen and Sawyer, has recommended these additional services as required to implement the Project. The City staff negotiated with E&K to reach agreement on the value of these additional services. Together, the City and E&K negotiated a total of \$200,000 to implement the revisions outlined above.

The City provided the Construction Documents to Miami-Dade County, as a regulatory agency for transportation issues, for review. The County is requiring the City to revise the documents to provide for a perimeter sidewalk along Belle Isle Park, to remove three of the six crosswalks across Island Avenue, and to include a sidewalk along the south side of North Island Avenue. Without these revisions, the County will not approve and/or permit the drawings. It is estimated that these revisions will push the construction back approximately 8 months. The City is currently awaiting a proposal from E&K to implement the outlined revision to the drawings. It is anticipated that the negotiation on this part of the revised scope will be concluded before the Administration presents this issue to the Finance and Citywide Projects Committee.

The Administration requests a referral to the Finance and Citywide Projects Committee for discussion and recommendation to the Mayor and City Commission on this item.

CITY OF MIAMI BEACH

CITY HALL 1700 CONVENTION CENTER DRIVE MIAMI BEACH, FLORIDA 33139
www.miamibeachfl.gov



COMMISSION MEMORANDUM

To: Mayor David Dermer and
Members of the City Commission

Date: May 18, 2005

From: Jorge M. Gonzalez
City Manager

A handwritten signature in black ink, appearing to read 'Jorge M. Gonzalez'.

Subject: **A REFERRAL TO THE FINANCE AND CITYWIDE PROJECTS COMMITTEE OF A PROPOSED AMENDMENT TO THE CITY'S AGREEMENT WITH GLATTING JACKSON KERCHER ANGLIN LOPEZ RINEHART FOR THE PLANNING AND DESIGN OF THE WEST AVENUE NEIGHBORHOOD RIGHT OF WAY IMPROVEMENT PROJECT TO PROVIDE FOR ADDITIONAL PROFESSIONAL SERVICES IN THE AMOUNT OF \$134,009 REQUIRED TO IMPLEMENT THE PROJECT.**

RECOMMENDATION

Refer the Item.

ANALYSIS

In May 2001, Glattig, Jackson, Kercher, Anglin, Lopez, Rinehart ("Glattig Jackson") was awarded a contract with the City of Miami Beach to provide planning, design, and construction administration services required to implement the West Avenue/Bay Road Right of Way Improvement contract. The total fee for the original Agreement was \$231,444. At the time the contract was awarded, the relatively small amount of funding allocated by the G.O. Bond and Stormwater Bond for the neighborhood resulted in planned project streetscape improvements being limited to West Avenue and Bay Road.

Over the next several months work proceeded on project planning and a Community Design Workshop (CDW) was held on November 8, 2001. Workshop attendees expressed a very vocal consensus that the project should be delayed until sufficient funding could be identified to implement comprehensive neighborhood-wide water and stormwater improvements rather than the targeted improvements proposed. In response, the project planning effort was put on hold while a search for additional funding was conducted.

Bay Road Stormwater Improvements

Although the planning effort for the larger neighborhood was put on hold, the planning and design of Bay Road improvements was accelerated so that construction drawings could be provided to the developer of the adjacent Grand Flamingo project, AIMCO, who was required through a Design Review Board (DRB) order to construct Bay Road streetscape improvements between 14th and 16th Streets. In support of this portion of the Project, on April 10, 2002, the Miami Beach City Commission approved Amendment One to the original contract to provide additional professional services associated with the design of the Bay Road drainage improvements (\$59,669), the planning of streetscape and street

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end improvements to 10th, 14th, and 16th Streets (\$17,890), and the holding of a second CDW (\$9,400) for a total additional fee of \$86,959.

On September 25, 2002, the City approved Amendment Two to the original contract in the amount of \$19,980 to provide additional required drainage design services for Bay Road. On May 21, 2003, the City approved Amendment Three to the original contract in the amount of \$64,480 to provide for construction administration services for construction of Bay Road improvements. On August 2004, the City approved Amendment Four to the original contract in the amount of \$18,100 for additional construction administration services required for Bay Road construction, bringing the total fee to \$ 420,963.

Bay Road construction continued and was substantially completed in late 2004. At that time, the City began negotiating with Glattig Jackson to restart and complete the planning process for the overall West Avenue Neighborhood, while continuing to seek the funding required to implement comprehensive improvements as was agreed to after the first CDW in November 2001. However, the existing Consultant planning and design agreement has to be amended to compensate the Consultant for the additional work generated by the increase in the scope of planned improvements. Negotiations to amend the existing agreement have been ongoing since early 2004.

Planning Phase for West Avenue Neighborhood

After several years of the planning effort being placed on hold to work on the Bay Road project, and attempts to identify additional funding for the water and stormwater components identified by the Community at CDW No. 1, the City needs to determine the next steps to take with regard to the planning of the entire West Avenue Neighborhood project. Additional funding for the desired water and stormwater improvements have not yet been identified, and may not be identified for another year or two, or until additional bonds can be issued for the water and stormwater system upgrades.

At this point, the City has three (3) options:

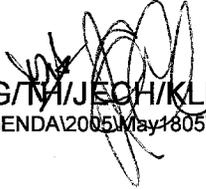
1. Continue placing the project planning on hold until funding can be identified, which may be another year or more;
2. Move forward with additional planning efforts to complete the planning phase and adopt a Basis of Design Report (BODR); or
3. Terminate the agreement with Glattig Jackson and place the project on hold until all additional funding can be identified, at which time the City will need to enter into a new Request for Qualifications (RFQ) process to hire a new A/E consultant.

After several months of further discussion and consideration, the Administration has determined that it would be in the City's best interest to move forward with the additional planning efforts to complete the planning phase and adopt a BODR. Glattig Jackson will be able to continue to the planning for the above-ground improvements, as well as addressing the comments made by the Community during CDW No. 1. The BODR can be adopted with the appropriate recommendations for improvements, but the design and

construction of the improvements will be placed on hold until sufficient funding is identified.

The City has negotiated these additional services with Glatting Jackson and reached agreement on a proposed fifth Amendment to the Project to cover additional Planning services in the amount of \$134,009 for the proposed increase of the overall project scope and construction budget from approximately \$2,718,012 to \$10,800,000. Glatting Jackson has also agreed to put the project design on hold, and remain under agreement, until the funding can be found and the design process completed.

If the Commission approves Amendment No. 5, planning efforts in the West Avenue neighborhood will be re-initiated shortly thereafter. A second CDW will be scheduled and the BODR developed. The additional planning effort is expected to be completed by late 2005. It should be noted that this delay has not significantly impacted the construction timeline of this project, as it was to be one of the last constructed projects in the ROW Program.



JMG/TA/JECH/KLM/DKT

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CITY OF MIAMI BEACH

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COMMISSION MEMORANDUM

To: Mayor David Dermer and
Members of the City Commission

Date: May 18, 2005

From: Jorge M. Gonzalez
City Manager

Handwritten signature of Jorge M. Gonzalez.

Subject: **A REFERRAL TO THE FINANCE AND CITYWIDE PROJECTS COMMITTEE – DISCUSSION REGARDING THE STATUS OF THE 1996 SWAP-OPTION AGREEMENT ON THE SERIES 1994 TAXABLE PENSION SPECIAL OBLIGATION BONDS BETWEEN THE CITY OF MIAMI BEACH AND MORGAN STANLEY CAPITAL SERVICES, INC.**

ADMINISTRATION RECOMMENDATION

Refer the matter.

ANALYSIS

On February 1, 1995 the City of Miami Beach issued \$57,710,000 of Taxable Special Obligation Bonds (Pension Funding Project), Series 1994. The bonds were issued by the City for the purpose of providing the required funding:

- To discharge the Unfunded Actuarial Accrued Liabilities as of October 1, 1993 with respect to the Pension Plans (\$56,081,416)
 - Fire and Police Base and Supplemental Plans = \$50,520,480
 - Unclassified Employees' and Elected Officials' Plan = \$5,560,936
- To pay the cost of issuing the bonds.

In March 1996 interest rates had declined by approximately one and one half percent and in an effort to capture these savings, the City Commission approved the execution of a transaction which allowed the City to receive a payment of \$1.4 million from Morgan Stanley Capital Sources Inc. (Morgan Stanley) representing the present value savings from the reduction in interest rates as though a traditional refunding of the Series 1994 Bonds had been accomplished. In exchange for this payment, the City contractually agreed to grant a one day option (August 1, 2005) to Morgan Stanley that if exercised, could obligate the City to enter into an interest rate swap agreement (the "Swap Agreement") and issue variable rate bonds on September 1, 2005. If the Swap is exercised, Morgan Stanley is also required to pay the City an additional sum of \$1,567,615 which should approximate all the costs of issuance and the call premium for the City to issue the bonds to refund the Series 1994 Bonds.

City's Current Position

After review with the City's Bond Counsel and Financial Advisor, the City faces the following options:

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Date 5-18-05

- Option Expires Unexercised (this is a highly unlikely event)

If Morgan Stanley elects not to exercise its option, the City retains the original payment of \$1,400,000.

If current market conditions continue into August the City could refund the Series 1994 Bonds at rates of approximately 5% compared to the average rates on the remaining outstanding Series 1994 Bonds of 8.58%.

- Option is Exercised; Swap Becomes Effective; Refunding Accomplished with Variable rate Bonds

If Morgan Stanley elects to exercise its option, and the City determines that it is in its best interests to remain in the Swap to maturity, the transaction must be completed with a variable rate refunding issue, with the City's rate fixed throughout the Swap at 8.27%. Given market conditions on April 26, 2005 this action would reduce the original \$1.4 million benefit by approximately \$100,000.

In addition, the City may achieve greater or lesser savings during the life of the Swap depending on the relationship of the variable rate paid on the bonds to the variable rate received from Morgan Stanley pursuant to the Swap. Also the City may be exposed to the liquidity facility renewal risk and counterparty risk.

- Option is Exercised; Swap is Terminated; Refunding Accomplished with Fixed Rate Bonds.

If Morgan Stanley elects to exercise its option, and the City determines that it is in its best interests to terminate the Swap, to avoid the potential additional risks and costs, the City would sell fixed rate taxable refunding bonds, using the proceeds to refund the Series 1994 Bonds and to pay any termination payment due under the Swap. Under the assumption of termination, expenses associated with a fixed rate bond sale have been provided for in the Swap exercise fee but the City would need to issue sufficient fixed rate bonds to also pay the termination payment due Morgan Stanley, which as of April 26, 2005 we estimate to be approximately \$11 million. This transaction would reduce the original \$1.4 million benefit by \$355,000 but this is subject to change based upon market conditions.

- Under this scenario, the City's resulting debt obligation remains essentially unchanged relative to the Series 1994 debt service; however, the City eliminates interest rate, counterparty and liquidity facility renewal risk.

Recommendation from the City's Financial Advisor, RBC Dain Rauscher

When the City entered into the Swap in 1996, potential future savings of refunding the Series 1994 Bonds and the resulting annual debt service through the original maturity of September 1, 2021 were effectively locked in. While the payment of a large termination payment to terminate the Swap may have "sticker shock", the fact is that the lower interest rates today allow the City to issue the additional debt and to pay the termination payment while preserving over \$1 million of the original present value benefit the City agreed to when it executed the Swap in March 1996. RBC Dain Rauscher recommends that the City proceed to:

- Adopt an Authorizing and Delegating Resolution in July which authorizes the City to issue refunding bonds (whether or not Morgan Stanley exercises its option under the Swap) and, if Morgan Stanley exercises the option, delegates to the appropriate City official, after consultation with the Chief Financial Officer and RBC Dain Rauscher, as Financial Advisor, authorization to determine in August whether to maintain the Swap and issue variable rate bonds or terminate the Swap and issue fixed rate bonds.

In light of the exercise date of August 1, 2005 and the swap effective date of September 1, 2005, the Administration recommends that a discussion pertaining to the Swap-Option Agreement and the different alternatives available be referred to the Finance and Citywide Projects Committee.

JMG\PDW\mim

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CITY OF MIAMI BEACH

CITY HALL 1700 CONVENTION CENTER DRIVE MIAMI BEACH, FLORIDA 33139
www.ci.miami-beach.fl.us



COMMISSION MEMORANDUM

To: Mayor David Dermer and
Members of the City Commission

Date: May 18, 2005

From: Jorge M. Gonzalez
City Manager

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Subject: **A REFERRAL TO THE FINANCE AND CITYWIDE PROJECTS
COMMITTEE – DISCUSSION REGARDING REFUNDING OF THE MIAMI
BEACH REDEVELOPMENT AGENCY TAX INCREMENT REVENUE
BONDS, SERIES 1993 AND 1996.**

ADMINISTRATION RECOMMENDATION

Refer the matter.

ANALYSIS

The Administration would like to refer to the Finance and Citywide Projects Committee a discussion regarding the funding options available to the Miami Beach Redevelopment Agency City Center/Historic Convention Village (RDA-CCHCV).

The Administration continually reviews our outstanding bonds for potential refunding opportunities and currently there is an opportunity to refund both Series 1993 and 1996 A and B of the Miami Beach Redevelopment Agency Tax Increment Revenue Bonds which may result in significant savings to the Agency. The net present value savings to be earned as a result of this transaction were estimated by RBC Dain Rauscher, our financial advisor, to be approximately \$5,793,821 as of April 26, 2005.

JMG\PDW\mim

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Agenda Item CYD
Date 5-18-05

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CITY OF MIAMI BEACH

CITY HALL 1700 CONVENTION CENTER DRIVE MIAMI BEACH, FLORIDA 33139
www.miamibeachfl.gov



COMMISSION MEMORANDUM

To: Mayor David Dermer and
Members of the City Commission

Date: May 18, 2005

From: Jorge M. Gonzalez
City Manager

Handwritten signature of Jorge M. Gonzalez in black ink.

**Subject: REFERRAL TO THE NEIGHBORHOOD / COMMUNITY AFFAIRS
COMMITTEE - DISCUSSION ON AMENDED NOISE ORDINANCE**

ADMINISTRATION RECOMMENDATION

Refer the item.

ANALYSIS

For a number of months the Administration has been meeting with a variety of interested parties to discuss changes in the City's Noise Ordinance. The parties involved to date have included: residents, hoteliers and nightlife operations.

Over the months of discussion the various parties have largely come to consensus on Ordinance changes, and enforcement and penalty procedures to be used in addressing noise within our community. Each of the parties have made compromises and worked productively to create a new version of the Noise Ordinance.

The heart of the new Noise Ordinance will be a formal enactment of Miami-Dade County Code Section 21-28, which the City currently enforces for noise purposes. To that core policy, the City Ordinance will propose for the City Commission a specifically tailored set of conditions and penalties unique to our environment. It is the escalating penalties and the enforcement protocol that has consumed the largest amount of discussion among the various parties.

Before the Ordinance is actually scheduled in a Committee meeting, the Administration will confirm final language and any outstanding concerns among the various parties. It is the Administration's intention to bring to the Committee and ultimately the full City Commission in June, a document that is representative of a consensus of the interested parties.

JMG\RCM\sam

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Agenda Item CYE
Date 5-18-05

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**CITY OF MIAMI BEACH
OFFICE OF THE MAYOR & COMMISSION
MEMORANDUM**

**TO: JORGE M. GONZALEZ
CITY MANAGER**

**FROM: SIMON CRUZ
COMMISSIONER**

DATE: MAY 13, 2005

RE: AGENDA ITEM

Please place on the May 18th, 2005 City Commission agenda for referral to the Planning Board the consideration of an ordinance amending the land development regulations to provide that appeals from the City's land use boards, i.e., the Historic Preservation Board, the Board of Adjustment and the Planning Board, be to the City Commission, before an appeal is taken to either a Special Master or Circuit Court.

SC/ml

Agenda Item C4F
Date 5-18-05

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CITY OF MIAMI BEACH

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COMMISSION MEMORANDUM

To: Mayor David Dermer and
Members of the City Commission

Date: May 18, 2005

From: Jorge M. Gonzalez
City Manager

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Subject: **REPORT OF THE FINANCE AND CITYWIDE PROJECTS COMMITTEE
MEETING OF APRIL 8, 2005.**

A meeting of the Finance and Citywide Projects Committee (Committee) was held on April 8, 2005 at 3:00 p.m. in the City Manager's Large Conference Room.

NEW BUSINESS:

1. Discussion regarding the City's plans for improvements to streets not covered by the City's General Obligation (G.O.) Bond.

ACTION

No action necessary. Presentation was given.

Chairman Jose Smith introduced and summarized the item. Chairman Smith stated that he had referred this item to the Committee in order to review the City's planning efforts for street improvements not currently funded through the City's G.O. Bond program.

Public Works Director Fred Beckmann gave a presentation to the Committee outlining the City's planning efforts for citywide pavement improvements.

Mr. Beckmann gave a general overview of the citywide pavement and resurfacing improvement plans for:

- City of Miami Beach owned streets
 - Public Works Department scheduled improvements;
 - Capital Improvement Office Right of Way Program scheduled improvements;
- Florida Department of Transportation owned streets;
- Miami-Dade County owned streets.

Mr. Beckmann stated that the majority of the scheduled improvements on City owned streets would be funded through Transit Surtax Funds.

City Manager Jorge M. Gonzalez stated that the City, in an effort to be proactive, is developing a "Roadway Pavement Management Program" which will keep an inventory of repaved citywide streets and their useful life.

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Mr. Beckmann added that after completion of the proposed citywide pavement improvements, 90% of the City's road infrastructure would have been repaved, totaling over 190 miles of resurfacing.

Vice-Chairman Richard L. Steinberg and Commissioner Matti H. Bower noted that it appears that utility companies that tear-up and resurface pavements in order to do repair work often leave the streets in poor conditions. Mr. Beckmann stated that utility companies have clear instructions from the City to restore streets to strict specifications. Mr. Beckmann added that he would address these concerns and notify inspectors.

2. Status report regarding Miami-Dade County General Obligation Bond Issue – City of Miami Beach Projects.

ACTION

No action necessary. Status report was given.

Mr. Gonzalez introduced and summarized the item. Mr. Gonzalez stated that Miami-Dade County staff has advised the City that in order to maintain the County's millage for the G.O. Bond debt at .390 mills, the County anticipates funding for the projects to be phased over a 15-year period.

Mr. Gonzalez added that the Administration is preparing a sequencing schedule for the County to identify funding needs for priority projects. He also stated that it is unknown, at this time, if any of the City's priority projects will be affected by the schedule of funding that will be made available by the County.

Mr. Gonzalez additionally stated that the City has provided the County with a drawdown list of approximately \$5.4 million in funding needs for the current year. He added that the list includes the following projects:

- Lummus Park,
- Beach Maintenance Facility,
- Band Shell Park,
- 41st Street Phase II Bridge Repair/Restoration,
- South Shore Community Center, and
- Historic City Hall

Vice-Chairman Steinberg stated that the County's proposed 15-year sequencing schedule could impact the availability of the \$55 million earmarked for the Miami Beach Convention Center. Mr. Gonzalez replied that the sequencing could impact when the \$55 million will become available.

Mr. Gonzalez further added that the City will have to make a policy decision whether it would want to proceed with the Convention Center Project by forward funding the project with Parking Funds or Undesignated General Fund dollars. He additionally stated that by forward funding projects the City could avoid increase costs due to inflation.

Chairman Smith asked what the Committee and City Commission could do to expedite the availability of the County G.O. Bond funds. He also asked if the Administration would like a Resolution from the City Commission stressing the funding urgency for priority projects.

Mr. Gonzalez replied that a Resolution will eventually be in order, but he would first like to meet with the Miami-Dade County Commissioner Bruno A. Barreiro, County Commissioner for Miami Beach and Chairman of the County's General Obligation Bond Subcommittee.

Chairman Smith stated that beach erosion has become a serious concern, as portions of the coast are virtually without beach. Chairman Smith added that he would like to see the Beach Erosion Mitigation and Renourishment Project funded as a priority project.

3. Capital Improvement Projects – Processes, Funding, and Schedules.

ACTION

No action necessary. Presentation was given.

Mr. Gonzalez introduced and summarized the item. Mr. Gonzalez stated that the City's Capital Improvement Program (CIP) has made significant progress since its inception.

Mr. Gonzalez added that since the year 2001 the CIP has completed seventy projects valued at over \$101 million. He added that another 20 projects valued at over \$77 million are currently under construction and another 70 projects valued at \$200 million are anticipated to be in construction within two years.

Mr. Gonzalez additionally stated that the City's \$680 million CIP is large, particularly when compared to other programs. Mr. Gonzalez referenced Broward County's CIP of \$636 million and NE Ohio's CIP of \$730 million. He further added that the City's \$680 million CIP equates to approximately \$56,000 of capital improvements per square mile.

Mr. Gonzalez addressed the criticism that the CIP Right of Way (ROW) Program has received as being too slow and added that the ROW Program currently represents approximately 25% of the entire CIP. He further stated that the City has addressed many of the earlier challenges faced by the CIP including the fact that the ROW Program was not initially master planned. He added that to date, nine out of the twelve neighborhoods have been master planned and have reached consensus. He further added that as a result of reaching consensus, some projects will come on-line behind originally scheduled dates, but the neighborhoods will obtain a well designed/planned quality product.

Mr. Gonzalez further summarized the early challenges faced by the City:

- Lack of a ROW Master Plan
- Lack of a Program Manager
- Deficient Architectural and Engineering (A/E) and Construction Language
- No CIP Office in Place

Mr. Gonzalez added that once projects get through the planning process and move into the construction phase, the City has demonstrated the ability to deliver quality projects within budget.

Mr. Gonzalez stated that when evaluating construction delays, consideration should be given to the "Triangle of Construction." Mr. Gonzalez added that there are essentially three factors that can impact a construction project: time, quality and budget. He further stated

that in most cases, only two of these factors can be controlled at any given time. He added that the City has decided to control quality and budget to date at the sacrifice of time.

The Committee discussed particular issues delaying the Normandy Pool Project, Flamingo Neighborhood ROW Project and Sunset Isles ROW Project.

Commissioner Saul Gross stated that the current review process appears to add delays to CIP projects moving from the planning process to the construction phase and perhaps the City should look into streamlining the current review processes. Mr. Gonzalez stated that the Administration is looking into internal process reviews in order to streamline the planning the process.

Committee members expressed their desire for the Administration to improve communication efforts to the Community through the use of newsletter mailings, newspaper advertisements and television announcements in an effort to keep the community informed of the CIP and how neighborhoods will be impacted by construction efforts.

4. Discussion regarding a proposed amendment to EDAW's Agreement with the City of Miami Beach for the planning and design of the Flamingo Neighborhood Right of Way Improvement Project.

ACTION

The Committee moved the item to the full Commission for discussion.

Acting Capital Improvement Projects Director Jorge Chartrand introduced and summarized the item. Mr. Chartrand stated that the Flamingo Neighborhood Right of Way Improvement Project item was referred to the Committee because of design and budget issues.

Mr. Chartrand stated that as the planning and design phases of the project have progressed, the City has finalized its field data collection and system evaluation activities which have identified the need for additional water mains to be replaced based upon anticipated system capacity requirements and end of useful life criteria.

Mr. Chartrand additionally stated that sufficient funding was originally determined to be available to replace all identified citywide Priority 1 and Priority 2 water mains; however, funding shortfalls precluded the replacement of all but the most important Priority 3 lines.

Mr. Chartrand added that additional work being provided has necessitated an amendment to the original Agreement with EDAW in order to provide the requisite compensation to design, permit and provide construction administration services for the additional work.

Mr. Chartrand added that as a result of City analyses, a revised total of 23,880 linear feet (or 4.5 miles) of water mains were identified to be replaced within the Project boundaries and a fee has been negotiated to compensate the Consultant for the additional detailed design, permitting, and construction services required to implement the revised water main scope of work. Mr. Chartrand added that the Administration is proposing to fund the additional work, totaling \$556,219 through available Water and Sewer Bond funding.

**ATTENDANCE SHEET
SPECIAL
MEETING OF THE FINANCE AND CITYWIDE PROJECTS
COMMISSION COMMITTEE**

DATE: - APRIL 8, 2005 TIME: - 2:30 PM

PLEASE STATE YOUR NAME WHEN SPEAKING TO THE COMMITTEE - THANK YOU

PLEASE PRINT NAME	BUSINESS NAME & PHONE
Jerry Libbin	InterSecurities (305) 389-0710
Shelly Bretzinger	Student 7862537752
ABEL SABORIT JR.	City of Miami Beach ^{Aide to Comm. Bower} (305) 673-7000 (6091)
Mario Martinez	SunPost 305 538 9700 x215
Richard Steinboz	CMB
LUNIE SPANER	CIP / CMB
MIKE GOERRA	THE GORDIAN GROUP. 305-506-5009
MAURO BURGIO	CMB / CIP
Raul Guit	City Attny's Office
TRISH WALKER	CMB / FIN.
MANNY MARQUEZ	" " . X6383
Kristia McKew	CMB CIP x6248
Tim Henstreet	CMB CHO x6431
Jorge Chartrand	CMB CIP x7071
JOSE SMITH	CMB 7106
Jorge Gonzalez	CMB - CHO
Dolores Mejia	CMB - M&C x6834

ATTENDANCE SHEET
SPECIAL
MEETING OF THE FINANCE AND CITYWIDE PROJECTS
COMMISSION COMMITTEE

DATE: - APRIL 8, 2005 TIME: - 2:30 PM

PLEASE STATE YOUR NAME WHEN SPEAKING TO THE COMMITTEE - THANK YOU

PLEASE PRINT NAME	BUSINESS NAME & PHONE		
<i>Esther M. Rodriguez</i>	<i>Mayor & Commission Dept. ^{ext. 6528}</i>		
FRED BECKMANN	CMB-PW		
MATTI BOWER	CMB-M+C		
RICHARD STEINBERG	CMB-M+C		
SAUL GROSS			
RAUL AGUILA	- CAO		
/	/		

CITY OF MIAMI BEACH
Office of the City Manager
Interoffice Memorandum



To: Finance and Citywide Projects Committee

Date: April 8, 2005

From: Jorge M. Gonzalez
City Manager

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Subject: **CAPITAL IMPROVEMENT PROJECTS - PROCESSES, FUNDING AND SCHEDULES**

At the February 23, 2005 City Commission meeting, an item was referred to the Finance and Citywide Projects Committee regarding the funding for Capital Improvement Projects, and the need to streamline processes, in order to expedite the construction schedules for these projects. This issue was raised as a concern based on estimated shortfalls in funding, and delays in the construction of the Neighborhood Right-of-Way Infrastructure Improvement and Public Facility Projects.

Discussion Items

While it is true that some of our projects have fallen behind their originally anticipated schedules, the Capital Improvement Program has experienced many successes and progressed greatly. In the course of a few years, the City has created a construction oversight capacity and completed more capital projects than at any time in the City's history. As will be illustrated, a significant amount of work is being done or is soon to be done and a significant amount of work is projected to be done in the next several years. Over \$101 million in projects have been constructed since 2001 and another \$77 million is currently under construction.

As with any new undertaking, lessons are learned and adjustments are often appropriate in making improvements. In our capital construction efforts, the City is now undertaking this detailed internal review in order to improve project timing and processes; however there is still room for other enhancements to the projects that uniquely the City Commission can help to realize.

Commission discussion and guidance on several critical factors impacting project timing and completion may be helpful in expediting the capital program. Specific discussion of the elements of

- funding,
- to some degree, project quality, and
- the continued level of community involvement

represent opportunities to adjust our approach and processes beyond the ongoing internal review.

Discussion and possible adjustment of the current policy of holding very tight on project costs and in particular some of the soft costs can be instrumental in helping to get projects completed in a more timely fashion. Some of the contracts negotiated by the City are

perhaps too tight and as a result the production from affected consultants and contractors is impacted. Some flexibility in this area with appropriate circumstances would be helpful.

Discussion and possible adjustment of the current policy on quality may also offer opportunities to expedite projects. At present the City holds contractors very closely to the original contract requirements, thereby requiring that in a number of instances work be redone at the expense of time. Some flexibility to accept alternate work or results, close to but perhaps not exactly as specified, would allow time to be saved on some projects.

Discussion and possible adjustment of the current policy for community involvement may also present some opportunities to speed up project timing. The present policy of being both thorough in the resolution of disputes within the community and being very inclusive at all levels of our projects has and will continue to add time to our capital program. While the investment of time building consensus in the front end of the process was a necessary and very useful undertaking, our project experience has shown that as we develop construction documents the number of community review opportunities slows the process, with little added to the specific project. What is seen during the construction review meetings is the entry of persons completely new to the project at the neighborhood level that either slows the process to acquaint them, or introduces changes in concept that need to be addressed and resolved. Limiting the review opportunities may help to expedite the projects.

However, additional project funding is very likely the single factor that can most immediately and significantly impact project completion.

Capital Improvement Program Description and Status

As the City has developed, the infrastructure (roads, water lines, stormwater drainage system, etc.) was constructed as needed, and maintained as required, but never fully replaced and kept on a regularly scheduled replacement plan. After the condition of the infrastructure was largely ignored for about 40 years, in the early 1990s, the City began to focus on infrastructure improvements within the commercial areas of the City. This included improving streetscapes and underground utilities in the areas most identified as commercial or tourism based. These improvements caused the Commission, Administration and citizens to begin thinking about improving the recreational areas and the water and sewer infrastructure (also due to mandated improvements by Miami Dade County) throughout the City, which led to the issuance of two (2) bonds in 1995. The first bond was the \$15 million General Obligation Bond for park improvements (Parks Bond) at various locations which were master planned, followed by design firms being hired in 1997 to implement the master plan. The second bond was a \$59 million Water and Sewer Revenue Bond for improvements to select water and wastewater systems components. As the planning and design efforts progressed on the Parks Bond projects, and as they became more visible through the community process, it was determined that the City had the financial capacity and the need to secure additional funding to complete more extensive park, water, wastewater and stormwater infrastructure project scopes than originally anticipated, and to address improvements in the City's residential areas.

Leading up to 1999, the City undertook several efforts to secure the additional funding. Engineering studies were conducted to examine the feasibility of issuing an additional Water and Sewer Revenue Bond and a Stormwater Revenue Bond, with Master Plans produced at the conclusion of the studies. It should be noted that each “Master Plan” was specific to each discipline and proposed improvements were not coordinated. These resulted in the issuances of a \$54 million Water and Sewer Revenue Bond and a \$52 million Stormwater Revenue Bond, both issued in 2000.

At the same time, the Administration began a series of internal meetings to review the financial status of capital projects, which resulted in a recommendation for the issuance of a General Obligation Bond to improve specific parks, fire facilities and apparatus, and streetscape enhancements throughout the City. Pursuant to Resolution 99-23263 adopted on July 21, 1999, the City Commission authorized the City to prepare language calling for a referendum for the issuance of General Obligation Bonds for the parks, fire facilities and apparatus, and streetscape enhancements and conduct public meetings to seek community input for the type and scope of projects desired. These meetings were held in August 1999 and residents expressed their concerns that the streetscapes in residential neighborhoods be improved, that the infrastructure be maintained once constructed, and that the projects be coordinated with the underground infrastructure improvements also being planned in order to minimize disruptions and so that cost efficiency was maximized. The community also requested that a commitment for adequate resources to complete the projects be made, and that continuous community involvement play a role in the development of the projects, to ensure community consensus on reasonable changes in scope.

These meetings resulted in the adoption of three (3) Resolutions on September 14, 1999, calling for a special election on November 2, 1999 for the referenda of three (3) separate General Obligation Bonds, totaling over \$90 million: one for Fire facilities and apparatus (\$9.7 million); one for neighborhood infrastructure (streetscape) improvements (\$57.9 million); and one for recreational facilities (\$24 million). On November 2, 1999, the voters passed the referenda, and the City began implementing a plan for the planning, design, bid/award and construction of the projects approved by the residents.

In addition, the City has worked to leverage its Bond investment to the greatest extent possible and has also coordinated all its other capital projects into a comprehensive Capital Improvement Program. This program includes projects funded from a variety of sources such as the City's two Redevelopment Area (RDA) Tax Increment Funds (TIF), Convention Development Tax (CDT) funds, Parking funds and Federal, State and county grants. Additionally, in November 2004, the voters of Miami Dade County approved a referendum to issue bonds for improvements throughout Miami Dade County. For the City, this means that an additional \$90 million will be available to construct improvements within the City's boundaries. As each of these funding sources get added to existing projects, additional time is needed to execute agreements, plan and design scope, and construct the actual improvements. The following is a summary of the City's Capital Improvement Program.

Funding Source	Amount	% of Total
1995 Parks Bond	\$ 15.0 million	2.2%
1999 GO Bond – Fire	9.7 million	1.4%
1999 GO Bond – Parks & Facilities	24.0 million	3.5%
1999 GO Bond – Neighborhoods	57.9 million	8.4%
2000 Water and Sewer Bond	54.0 million	7.9%
2000 Stormwater Bond	52.0 million	7.6%
City Center RDA TIF	70.0 million	10.2%
South Pointe RDA TIF	66.0 million	9.6%
Parking Funds	24.6 million	3.6%
Convention Development Tax	35.0 million	5.1%
Grants (Federal, State, County, etc.)	16.0 million	2.3%
2004 Miami Dade County GO Bond	90.0 million	13.1%
2001 Gulf Breeze Loan	15.0 million	2.2%
Other Funding Sources	158.0 million	23%
TOTAL	\$687.2 million	

Based on the above, it is estimated that the Neighborhood Right-of-Way (ROW) Program component represents only an estimated 28% of the overall funding in our Capital Improvement Program (CIP).

Type of Project in FY 2005 5-Year Capital Plan	# of Projects	% of Total
Parking	7	7.5%
Parks and Facilities	37	39.8%
Public Works (Environmental, Seawalls and Utilities)	9	9.7%
Public Works (Transit, Street Lighting, Non-ROW Streetscape)	14	15%
Public Works (ROW Streetscape)	26	28%
TOTAL	93	

* These projects are those reflected only in the FY 2005 5-year Capital Plan, and does not include those projects with funding that has been fully appropriated or projects that have been completed. A more thorough listing of projects being tracked is included as Attachment 1. Including those projects, the ROW program represents approximately 23% of the number of projects in the CIP.

In order to make sure that our above ground and below ground projects were planned, designed and constructed in a coordinated manner and implemented in an efficient sequence, the City combined most of the 1999 GO Bond Neighborhood funds with most of the improvements funded within the 2000 Water and Sewer Bond and 2000 Stormwater Bond to create a comprehensive Neighborhood Right of Way (ROW) Program. The City was subdivided into 13 neighborhoods to best accomplish one ROW effort. As you can see, the Neighborhood ROW component represents only an estimated 28% of the overall funding in our Capital Improvement Program (CIP) and 23% of the total projects currently tracked.

Over the past few years, the City has completed a number of projects, as outlined in Attachment 2. These projects have totaled over \$85 million in construction costs alone, not including the Program Management, CIP Office, or A/E Consulting fees. As you can see, several key priority projects have been completed or are in use today (reached substantial completion), such as the Regional Library, Miami Beach Golf Course, Scott Rakow Youth Center Phase I (ice rink), Flamingo Pool, North Shore Park and Youth Center, South Pointe Streetscape Phase I, Marseille Drive Streetscape Improvements and others. While the ROW Program has taken longer than originally projected, these Parks and Facilities projects and some streetscape projects have moved forward. Each of these has received its own share of accolades, demonstrating that quality and budget control factors did not detract from the projects being done right. The preliminary results from the Community Survey also indicate that 78% of the residents, businesses and community organizations rate the City's recently completed capital improvement projects as either excellent or good. Also attached is a list of those projects that are currently in construction, including an estimated timeline of construction duration (Attachment 3). These projects total another \$65 million in construction costs, which does not include soft costs values.

While the Parks and Facilities projects have been moving forward, the CIP Office is now introducing the ROW Program projects into the construction pipeline. The Washington Avenue project, one of the City's major transportation corridors, entered the construction phase in October 2004. This will be followed quickly by other ROW Program projects during 2005 and 2006. Attachment 4 identifies the ROW Program projects, and other projects, which are **anticipated** to begin construction in the next two years (end of 2005 through 2007). Within the next two years, it is estimated that the City will begin constructing projects valued at almost \$200 million.

Benchmark/Performance

In proposing to construct projects valued at over \$500 million over the past few and upcoming years, the City has taken on a large task. It is a big program as compared to the size of the City. The following table, derived in part from the July 20, 2004 presentation made by the CIP Office to the City Commission at Fiscal Year 2005 Budget Hearings, demonstrates that the City is undertaking one of the most aggressive Capital Improvement Programs in the nation, and certainly in the region.

<u>Jurisdiction</u>	<u>Population</u>	<u>Program Value</u>	<u>Soft Cost</u>	<u>Program Value Per Square Mile (thousands)</u>	<u>Program Value Per Resident</u>
Broward Co. (unincorporated)	92,000	\$636 million	32%	\$ 45,000	\$ 6,913
Detroit (MI)	4,000,000	\$4.3 billion	21%	\$ 4,000	\$ 1,075
Fort Lauderdale	150,000	\$490 million	26%	\$ 14,000	\$ 3,267
Gwinnett Co. (GA)	676,000	\$3.5 billion	N/A	\$ 8,000	\$ 5,178
Louisville (KY) SD	700,000	\$82 million	N/A	\$ 209	\$ 117
Miami Beach	90,000	\$400 million	18%	\$ 56,000	\$4,444
NE Ohio SD	1,850,000	\$730 million	35%	\$ 2,000	\$ 395
Orange Co. (CA) SD	2,350,000	\$2.4 billion	46%	\$ 5,000	\$ 1,021

* Since July 2004, the City's Program Value has increased by approximately \$100 million

While aggressive in its implementation plan, the current capital program is intended to minimize some of the negative experiences the City had in planning, designing and constructing projects in the past. The City has never previously experienced the proposed quantity and scope of capital projects before this. Planning and design efforts for previous projects often resulted in several redesign efforts, based on changing demographics, desires and needs. Projects were seemingly in perpetual design and redesign. The community input process was often repeated several times, and a community consensus was rarely reached without redesigning the project, at the expense of construction funding and of time needed to complete the design of the project. Before the bonds were issued, and prior to the creation of the CIP Office, it was not unusual to have projects in design for six or seven years prior to completing construction drawings. Examples of these are the Marseille Drive Streetscape project, the Lincoln Road projects, 71st Street Streetscape project, 42nd Street Streetscape project, the Normandy Isle Pool project, and the North Shore Park and Youth Center project. Timelines for construction committed to by A/E firms were not realistic, and many times were not met. Project and construction budgets would be established, but the design frequently surpassed the established construction budget. The projects were either then scaled back through re-design or value engineering, additional funds were added, or the project was put on hold to identify ways to resolve the variance in budget.

Early Challenges

As stated before, the City has never previously undertaken a capital program as large as currently planned. Many of the documents, processes and systems were not in place when the 1999 and 2000 Bonds were issued, and the City departments were not prepared to deal with such an intense increase in work volume related to the construction projects. To that end, the City faced many challenges early on in the implementation of this capital program, each having a successful outcome in its own right.

With the infusion of the new funding, the City amended Agreements with A/E firms who were already planning and designing the parks projects funded in part by the 1995 \$15 million Parks Bond. The City also issued Requests for Proposals (RFP) for Professional Architectural and Engineering (A/E) Services to master plan, design and oversee the construction of many of the ROW projects captured under the General Obligation (GO) Bond. It was agreed that extensive community input would be needed for those neighborhood infrastructure improvement projects (combined with the applicable Water and Sewer and Stormwater proposed improvements), where no planning activity had previously taken place. A new Master Plan would need to be developed that included the aboveground GO Bond improvements that coordinated with the previous Water and Sewer and Stormwater Master Plans.

At the time, it was estimated that the entire project timeline would be five years for these projects, which included obtaining community consensus (estimated as a 4 to 6 month effort at the time), designing the improvements, and constructing them. All of these projects were anticipated to be managed by the Construction Management Division of the Public Works Department, with three additional positions to be added to the staffing complement. The Administration agreed to also explore other methods of project implementation, such as Construction Manager at Risk agreements, and revised procurement processes. A citizen oversight committee was also established to assist in overseeing the implementation of the GO Bonds.

In 2000, the City issued a Request for Qualifications (RFQ) for Program Management Services to assist staff in overseeing and coordinating the planning, design and construction of the Right of Way Infrastructure Improvement Program (ROW Program), as the streetscape, water and sewer combined improvement projects came to be called. A similar RFQ was issued in 2001 for Program Management Services for the Parks and Facilities program, which included many of the projects funded in part by the Parks Bond and some of the GO Bond Recreational Facilities projects. The first A/E agreements for the ROW Program were not awarded until May 2001, approximately 18 months after the approval of the GO Bonds by the voters.

The City established the Capital Improvement Projects (CIP) Office in the summer of 2001 to “serve as a focal point for the planning and construction management activities associated with the extensive capital projects work being funded by the recently authorized G.O., Water and Sewer Bond, and Stormwater funding”, per the Letter to Commission No. 91-2001, dated May 11, 2001 (Attachment 5). Staff was pulled from the Public Works Department and additional positions added to provide the original staffing complement of 24 positions. Over time, the staffing and the resources allocated to the CIP Office have grown to 28 positions within the Planning/Community Outreach, Construction Management, and Administration areas of responsibilities, with 4 positions added in FY 2005 (Attachment 6). The annual budget for the office is just over \$2.7 million per year. This office was originally anticipated to be funded by chargebacks to the particular projects managed by the office, but is slowly being supplemented by the General Fund, since many of the projects were never funded to contribute to the budget of this office.

While the Parks and Facilities projects were also funded in part by the GO Bond, many of the projects were already in planning or design, so the additional funding required the A/E firms already under contract to revisit the scope and design of the projects, thereby pushing back the anticipated construction timelines for those projects. While there have been delays on the Parks and Facilities projects, those are not usually attributed to the public input process or the internal review process. Instead, those projects were under a different set of A/E agreements and construction contracts, which are difficult to enforce in the City's best interest, and lack proper accountability measures. Projects lingered for several years, with minimal accountability or fairness for all parties.

Another early challenge for the City was managing the community expectations. At a July 23, 2001 Commission Workshop, the Administration outlined potential differences in the neighborhood expectations and what the funds for the projects would actually be able to address (Attachment 7) for the ROW Program. As the planning effort for many of the ROW Program projects was just beginning, the Administration had seen that residents were expecting more from the three bonds than would actually be feasible, given the funding available at the time. The expectations of the residents appeared to be "wish-list" kinds of improvements, and no Master Planning had been done to provide data to support the feasibility of those improvements within the GO Bond allocations. Residents were looking for extensive beautification, while the funding would allow for minimal beautification.

The CIP Office created an extensive process early on to address "Neighborhood Expectations". Originally, the planning process was anticipated to be a 4 to 6 month effort, as described above. The City revised that process to be more inclusive. Direct mail notices were sent to every household within respective neighborhood boundaries announcing community meetings, which were also advertised in the Miami Herald, Sun Post and the community Spanish-language newspapers, and other outreach efforts were implemented, such as contacting known Homeowners Associations and activists in each neighborhood. At least one Community Design Workshop (CDW) was held with each neighborhood, with the A/E firm presenting budget-based options for aboveground improvements, and obtaining input from the residents with regard to their concerns and desires for neighborhood improvements. In most neighborhoods, a second and sometimes third CDW was held, so that design consensus could be obtained amongst the majority of attendees. For these subsequent CDWs, the CIP Office provided direct mail notices to those who attended the first CDW, and also advertised the meetings in the Miami Herald and the Spanish-language newspapers. Again, Homeowners Associations and activists were also contacted. At these CDWs, the CIP Office staff, the Program Manager and the A/E firm representatives outlined how much funding was available for each type of improvement (with the focus on aboveground improvements), to demonstrate that not all desires could or would be included, as sufficient funding did not exist. The neighborhood representatives attending these meetings eventually came to consensus on the vast majority of issues to be addressed within the project scope and available funding. The process was designed to and succeeded in having discussions at the community level that focused on realistic improvements, and avoided having to have the City Commission

discuss and arbitrate these issues at City Commission meetings. The General Obligation Bond Oversight Committee has also played a major role in this effort.

The A/E firms then drafted a Basis of Design Report (BODR), which included the anticipated scope of the projects, based on the input provided at the CDWs. The draft BODR was reviewed and commented upon by the applicable City Departments. The A/E firms revised the BODRs to include the pertinent, agreed upon comments from the respective departments, and presented a final BODR to the General Obligation Bond Oversight Committee and then the City Commission for final approval. When the BODRs received final City Commission approval, they became the agreed upon starting point for the design of the project scope.

The efforts of the City to be so inclusive and ensure that consensus was achieved took longer than originally anticipated. The A/E firms had to revisit the plans after each CDW and incorporate components, or revise plans altogether, based on the input received. The City Departments also had to take a careful look at the draft BODRs to ensure that their respective needs were addressed. The A/E firms had to review that input and possibly revise the draft BODRs to ensure that all policy and regulatory concerns were addressed. While originally anticipated to take 4 to 6 months, this planning effort typically took between 12 and 18 months to complete, pushing possible construction commencement back in order to be inclusive and ensure sufficient public outreach (Attachment 8 and Attachment 9). This extensive planning effort was an effort to reduce the number of re-designs necessary due to a lack of consensus, and in the long run, was intended to produce a design decision and to expedite construction as compared to the past project experiences prior to the creation of the CIP Office.

To date, 9 of the 12 neighborhoods have been master planned; the City Center, West Avenue and parts of the South Pointe neighborhoods still need to be master planned, but are well underway. During the master planning process, few issues rose to a level where the City Commission had to serve as the arbitrator for various desires within the neighborhoods. The Administration achieved consensus in all 9 master planned neighborhoods on the majority of issues. The expectations of the community were brought in line with what the budgets would be able to fund. These efforts, all of which have taken place after the issuance of the bonds, should have occurred prior to the bond issuances. It would have allowed the City to have a more realistic understanding of the desires of the community, which would have led to more realistic budgeting, and would have allowed the City to implement project construction closer to the issuance of each respective bond.

Current Challenges

On November 13, 2002, the Administration brought to the City Commission a proposed construction schedule for the Capital Improvement Projects both within the ROW and Parks and Facilities programs, and outside of those programs. The schedule as proposed and adopted by the Commission at that time, via Resolution 2002-25070, is attached as Attachment 10.

With the factors addressed herein that have caused delays, these project construction timelines have fallen behind the originally projected timeframes. The original implementation of the ROW program called for the majority of construction to take place over a five (5) year period, from approximately 2003 through 2007. The heaviest time for construction was to be from 2004 through 2006. Obviously, the projected timelines have not been met. Currently, the sequencing schedule calls for ROW construction to take place between 2006 through 2011, with construction occurring heavily between 2006 through 2009. Some tapering off is expected through the last years of the ROW program implementation. Projects outside of the ROW program are scheduled throughout the entire timeframe. This schedule does not address the introduction of an additional \$90 million from Miami Dade County General Obligation Bonds approved by the voters in November 2004 for the projects managed by the City of Miami Beach, or if any additional funds are obtained to address existing shortfalls in Water and Sewer Bond or Stormwater Bond funded projects. Once those factors are addressed, they will be introduced into the schedule.

The City is taking a coordinated approach to updating the timeline of construction sequencing. As has been discussed with the City Commission, oversight boards, and the residents previously, the entire City cannot be under construction at the same time without causing almost total gridlock. Therefore some neighborhoods and projects were always scheduled to begin construction later than others. This allowed for project designs to progress on those projects that were scheduled for later in the original project construction timeline. Due to the known project delays and future anticipated delays on projects which are already in progress, the original timelines established at the outset of the Program need to be revised. This revision will not affect the project sequencing itself, unless factors have caused one project to go into construction earlier and another one to go into construction later. The update will essentially be a shift in the timeline to reflect the necessary extension of the Program from the intended ending date to a new expected completion date of all planned projects.

Triangle of Construction

One of the factors to consider in evaluating project delays is what may be called the "Triangle of Construction". Essentially, there are three (3) factors that can impact a construction project: time, quality and budget. In most cases, only two of these can be controlled at any given time, as something will have to give in the tight relationship between all three. In the public sector, policy decisions are usually made to establish a fixed project budget, which limits the flexibility the entity has to affect the project schedule and quality is assumed to be fixed. The private sector, as profit makers, may be willing to sacrifice quality or supplement budgets in order to expedite construction.

With public sector entities, typically quality is held consistent since the desire is to provide a product that will serve the Community for decades. This means that when issues on a project arise, either through unanticipated elements, disputes, or other items, quality is typically preserved. In order to address the issue, the Owner (City) usually is faced with the choice of increasing the compensation to the A/E and/or contractor quickly and without much review to maintain the schedule, or, as is typical in public entities, carefully studying,

reviewing, and negotiating any additional compensation. This minimizes the impact to the budget, but at the expense of the schedule. At this point, staff has consistently been directed to preserve and defend City dollars, and has done so vigorously. As described, this has been done at the expense of the projected project schedules. Examples include the North Shore Park and Youth Center, the Bass Museum, and the Normandy Isle Park and Pool.

Quality and budget have been the two factors that the City has decided to control to date. If those decisions are changed, and time becomes one of the two main factors that City wishes to control, something will likely have to change with regard to quality or budget. If the City decides to control time and budget, quality may be sacrificed. If the City decides to control time and quality, additional funding may be needed to expedite projects.

Advancements Made

Through the City's continuous improvement and innovation efforts, there have been other advancements throughout the evolution of the Capital Improvement Program. The creation of the CIP Office led to creating the aforementioned Community Consensus and BODR approval process. Additional staffing has been recently added to the CIP Office staffing complement to allow for additional financial processing assistance, and legal document review. One of the other early priorities for the CIP Office was to draft new standard A/E Agreement language and Construction Contract language. The past experiences of the City, wherein the projects lingered for several years, with minimal accountability or fairness for all parties, demonstrated that significantly revised standard language had to be drafted for both the A/E Agreements and the Construction Contracts. This effort would ensure that as time progressed, those agreements and contracts would hold layers of accountability for both the City and the firms. Similarly, new standardized language would ensure the enforceability of the agreement and contract provisions most needing improvement based on prior experiences. The CIP Office worked with the City Attorney's Office to craft these agreements, which are in force today.

The City has also recently procured and implemented the EDEN Software System, which includes a Project Accounting module. Until recently, project budgets and the Annual Capital Budget were maintained in software products such as Microsoft Access or Excel where each interested department tracked projects individually and no comprehensive centralized system was maintained. This meant that project reconciliation between the separate departments was a constant need. Each time a funding commitment was made, each department would have to track those commitments independently. Every transaction would have to be tracked by each department in order to maintain consistent funding information. If a question was raised regarding the funding for a project, all parties involved would have to compare their information before a response could be generated. This process, all completed manually, would take weeks, if not months, to complete, and constituted staff time that was taken away from the program.

With the procurement of the EDEN system Project Accounting module, the project budgets can be entered, maintained, and tracked in one system, accessible by all applicable parties, and will interact with the City's financial system. This system is now being

implemented, and will be used for Capital Budgeting and project reporting within a few months. The City will be able to create standardized reports and produce the reports in a much easier fashion than current practice allows.

The City has entered into a Job Order Contracting (JOC) contract with several construction firms in May of 2003. These contracts are based on fixed unit prices, with the varying price factors for overhead and profit being the only difference between the contractors. The JOC contractors were competitively bid according to the City's Procurement rules and regulations, so the City has contractors on hand to complete most types of projects. If a contractor procured by the usual methods is defaulted or terminated for any particular reason, the City can contract with the JOC contractors much quicker than if another bid needed to be issued.

Many projects have been completed with JOC contractors in the past two years, demonstrating that the JOC program has been a success. In the first year of the program, job orders were issued on 58 projects totaling over \$10.5 million. This is more projects in one year than the City awarded through traditional bidding methods in the three years prior to the JOC program (53). The average time from the Joint Scope meeting (initial meeting of the City and Contractor to discuss scope of work) to Notice to Proceed Issuance averaged 26.3 days. This is approximately 150 days less than projects constructed through traditional bidding methods. Similarly, there were no contractor-initiated change orders, claims or litigation on any JOC project.

The CIP Office is also moving toward making documents available in electronic form via a software system called E-Builder. The CIP Office anticipates procuring licenses to E-Builder prior to the end of Fiscal Year 2005. E-Builder will allow the CIP Office and the Program Manager to communicate almost completely electronically with the Program consultants and contractors, and City staff construction document reviewers, and will eventually become a requirement for all Program consultants and contractors. Essentially, E-Builder will house a computer server and a website strictly for the CIP Office projects, and users purchase licenses in order to access and/or provide project information. The construction documents can be posted on a public part of the website, where reviewing departments, and/or the public, will be able to review them, print them out, and fax comments back to the CIP Office. An alternative to that is for the reviewing departments to purchase the applicable number of licenses, and then they will be able to access the construction documents and physically mark them up, without having to fax comments in. The comments will be kept on the construction documents themselves, for the CIP Office, Program Manager and consultants to review. It is anticipated that once utilized by all parties, the E-Builder system can drastically improve the review time for all projects, following the same timeline restrictions as will be defined in the revised process outlined above. It should be noted that access to this public part of the website may also be granted to the residents and other interested parties, if applicable.

Activities under Review

Of course, the City is always looking for innovative ways to improve processes and ensure greater efficiency, if possible. The Capital program is no different. For instance, the Construction Document Design Review process is an area where, perhaps, efficiencies can be experienced.

During the design process, which was originally estimated to take 9 to 15 months, the A/E firm designs the proposed improvements outlined in the BODR process and creates construction documents. The City's processes have called for these documents to be reviewed by the respective internal City departments at the thirty percent (30%), sixty percent (60%) and ninety percent (90%) design completion stage milestones. The purpose of the establishment at the onset of the program of the three (3) review milestones was to verify that design review comments and design standards were followed, that documents were consistent with the design intent and with the BODR, and that documents reflected the values established in the initial budgets. These milestones are outlined below. Over time, based on modifications to the process, Department review periods have extended to as much as eight (8) to twelve (12) weeks per review.

- Thirty percent (30%) – Preliminary documents which indicate all proposed improvements in plan view.
- Sixty percent (60%) – Intermediate documents which indicate all proposed improvements in plan and section view.
- Ninety percent (90%) – Near Final documents, pending review of 100% documents through City regulatory agencies.

It should also be noted that the CIP Office maintains consistent communication with the residents regarding the individual projects. The CIP Office maintains a webpage with information regarding the BODRs and construction drawings. Community Design Review Meetings (CDRMs) are also held with the neighborhood residents at the 60% design stage and the 90% design stage, to provide final opportunities to provide input to the City before construction documents are finalized and the permitting process begins. These meetings are again noticed via mailings and advertised in the Miami Herald, the Sun Post and Spanish-language newspapers, and the other outreach methods used. It is common that one issue brought up at such a meeting can result in several more meetings being held to achieve consensus on that particular issue. These meetings, wherein there is a conflict about how the project should be designed, can further delay the design and construction processes.

The City is currently examining this process to find ways of expediting the reviews by the City departments. Suggestions to date have included reducing the number of reviews from the three listed above to one (50%) or two (30% and 90%); revising the City's AutoCAD standards and requirements for the A/E firms to allow for greater flexibility; and providing strict deadlines for all comments to be received within the CIP Office and proceeding with further design if comments are not received by the determined deadlines. If comments are not received within the proscribed timelines, it will be interpreted that the design is acceptable to the reviewing departments. The E-Builder program mentioned above may

also assist with this process. The CIP Office is still developing a proposed revised process, and working with the respective City departments to implement a revised process. An update on the progress on this issue will be brought to the Finance and Citywide Projects Committee as soon as practical.

The Construction Document Design Review process is just one of many factors in the implementation of the City's capital program that affect schedules. If this particular process is revised, it does not mean, however, that all further delays are eradicated.

Other Potential Causes for Delay

Other potential causes for delay include higher construction costs, due to inflation and other economic factors. These higher costs frequently generate needed redesigns or scope evaluations in an effort to maintain projects within budgets. The original permitting and regulatory review process has also proven to take longer than originally anticipated. Since the inception of the program, regulations and codes have changed, and standards for design of certain project components have been created. Additional regulatory reviews have also been required. Consultants and contractors may also cause delays. This includes poor performance, a lack of manpower, insufficient funds, added scope, and scope adjustments to keep a project within budget.

Another reason for delay can be contributed to communities that have taken on initiatives that consciously delay the design, and hence construction, of a project. For instance, two neighborhoods in the City have decided to underground their utilities (electric, telephone, cable, etc.). While these undergrounding projects progress, the City must halt its Neighborhood Infrastructure Improvement project at whatever level of completion it is. The neighborhood will underground the utilities at their expense before the roadway and City infrastructure is under construction. If this coordination did not take place, the City would progress with the planned improvements, which would then be affected during the undergrounding effort. These neighborhoods have made the conscious decisions to delay the implementation of the City's project in order to preserve the integrity of the improvements once they are constructed.

As the program has progressed, it has been determined that many projects have insufficient funding to construct all of the defined, originally anticipated scope components. Attachment 11 outlines the potential project funding challenges for all Programs and projects, by funding type (stormwater improvements, water improvements, aboveground improvements, parks improvements). The potential funding challenges are related to original scope intended for which sufficient funding does not exist at this time, or has not been identified. As some of the funding sources are restricted to certain uses, it is important to keep in mind while reviewing this list that funding sources may not be interchangeable. This spreadsheet also reflects the current phase the project is in (planning, design and construction). Those projects that are in planning and design have a longer timeframe before any potential funding challenge will be refined or become reality. The City has a more immediate need to identify funding for those projects currently in construction to address challenges for critical components of the scope, as the projects cannot be completed without additional funding. Potential funding sources for these

projects have been identified, and include interest earnings from the existing bonds, from the Miami Dade County GO Bond, and grants that the City has already applied for.

Other scope components that was not integral to the main intent or function of the project, or that was not initially identified when the budget was developed, have not had as high of a priority placed on them. This includes scope that has been requested by residents or departments, but that was not part of the original scope of the respective projects. Nevertheless, the identified scopes are important to recognize, as additional funding may need to be identified in the future to construct these projects. The estimated scope and estimated value for these kinds of "wish-list" components is identified in Attachment 12.

The Administration will be putting together a "capital review group", to include applicable Assistant City Managers, Department Heads and essential staff to identify citywide, the entire scope of projects that may be under-funded, their timeframes and funding types. As the City may have the capacity to issue additional revenue bonds to fund additional Stormwater and Water and Sewer improvements, it is anticipated that the primary focus will be on those aboveground streetscape, park and facility projects, as these projects are typically funded by similar funding sources. This group will be tasked with prioritizing those projects so the City can examine the available funding and make consolidated, educated recommendations about funding. Otherwise, requests come to the City Commission without a full picture of other potential shortfalls that may be occurring. This group will be established and tasked with their responsibilities soon, and they will bring back recommendations to a workshop with the Commission, which will allow the City Commission to allocate any available dollars to those projects with the highest priority.

Resolution to Issues

With regard to the project timelines and funding issues, it has been suggested that adding resources to the CIP Office, or evaluating and revising internal processes, will eliminate the delays on projects. While that is true to some extent, it will not completely resolve the delays. There will always be delays in the process; the question is how to minimize them. As discussed above, the City needs to decide which factors are going to be controlled, and which resources (positions, funds, etc.) are going to be allocated to assist in minimizing the delays.

There are several issues that need to be examined and reported back to the Finance and Citywide Projects Committee and/or the City Commission as a whole. The Construction Document Review Process is currently being studied, and recommendations for improvement and greater efficiency are being developed. The Administration hopes to revise this process within the next month or so, which should assist in expediting the review processes for those projects still in the planning or design phases. The introduction of the E-Builder software is also anticipated shortly, which may assist in that effort as well. Similarly, once the Project Accounting module is completely populated and functioning, project budgeting information will be easier to access and report.

The CIP Office is examining its current structure, and will make recommendations during the budget process. Additional staff will be one of the components the CIP Office focuses

on, while additional resources and technology will also be examined. The CIP Office will also focus on the potential outcomes of adding staff with regard to productivity and quality of work. Another option the CIP Office has available and will evaluate, is hiring contract project managers, who would complement the permanent staff. These would be contract employees, working for only a limited amount of time, and not as permanent staff of the City. This method is often used in the consulting industry when specific project needs are identified that are not long term in nature. These contract employees would assist the City in expanding project management needs for major construction throughout the City, who could then be released as projects reach completion.

Similarly, additional resources for the consultants (A/E firms and Program Managers) may also need to be considered. The City's negotiations with these firms were very successful in protecting the public dollar, perhaps too successful, which has affected the timelines and quality of work. Where we have funded Agreements at minimum levels, the consulting firms are working, like the CIP Office, at core staffing levels, hiring only those employees that are essential to the projects to maintain and stay within budgets. Additional funding for those consultants may also improve efficiency of work, as discussed above. As discussed with the Commission previously, the CIP Office runs the Capital Improvements Program with a lower percentage of soft costs than most other similarly sized programs in the country (see table below). Additional resources with regard to soft costs (CIP Office staff, A/E Consultants, and Program Manager Consultants) would allow for additional staff to be hired or resources to be procured by the respective parties, and greater efficiencies achieved.

The City is also exploring the possibility of identifying additional funding to address potential project shortfalls. With the addition of the \$90 million Miami Dade County General Obligation Bond, some funding may be shifted between other projects to free up funding where applicable and possible. These funds could then be reallocated toward other projects, if funding restrictions permit. The "capital working group" will evaluate these possibilities as part of the overall mission of the group. Similarly, the City has investigated issuing additional revenue bonds to address the funding issues in the Water and Sewer and Stormwater projects. The City will continue to explore opportunities for additional bond funds as the principal of the existing bonds is spent down.

I hope that you find this information helpful and that it serves to guide the discussion regarding the Capital Improvement Program

c: Mayor and City Commission
Robert C. Middaugh, Assistant City Manager
Tim Hemstreet, Acting Assistant City Manager
Jorge E. Chartrand, Acting Capital Improvement Projects Office Director

CITY OF MIAMI BEACH

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COMMISSION MEMORANDUM

To: Mayor David Dermer and
Members of the City Commission

Date: May 18, 2005

From: Jorge M. Gonzalez
City Manager

Handwritten signature of Jorge M. Gonzalez.

Subject: **REPORT OF THE NEIGHBORHOOD/COMMUNITY AFFAIRS COMMITTEE
MEETING OF APRIL 26, 2005.**

A meeting of the Neighborhood/Community Affairs Committee was held on Tuesday, April 26, 2005 at 2:30 p.m. in the City Manager's Large Conference Room. Mayor and Commissioners in attendance: Mayor David Dermer, Matti Herrera Bower, Saul Gross, Jose Smith. City staff in attendance: Robert C. Middaugh, Assistant City Manager; Vivian P. Guzman, Department Director – Neighborhood Services; Jimmy McMillion, Special Projects Coordinator – Neighborhood Services Department; Floyd Jordan, Fire Chief; Donald Papy, Chief Deputy City Attorney; Robert Datorre, Assistant City Attorney; Jean Olin, Deputy City Attorney; Gus Lopez, Procurement Division Director; Deborah Turner, First Assistant City Attorney; Nannette Rodriguez, Public Information Officer; Chris Parrino, Fire Division Chief; Mario Martinez, Police Officer; John Heffernan, Dolores Mejia, Margarita Alcon, Esther Perez-Trujillo, Office of the Mayor and Commission; Randi MacBride, Neighborhood Services Department. Others in attendance are listed in the attached sign-in sheet.

- 1. DISCUSSION REGARDING AN ORDINANCE AMENDING MIAMI BEACH CITY CODE CHAPTER 2, ARTICLE VII, DIVISION 5 THEREOF ENTITLED "CAMPAIGN FINANCE REFORM" BY AMENDING CODE SECTIONS 2-487 ENTITLED "PROHIBITED CAMPAIGN CONTRIBUTIONS BY VENDORS", 2-488 ENTITLED "PROHIBITED CAMPAIGN CONTRIBUTIONS BY LOBBYISTS ON PROCUREMENT ISSUES", SECTION 2-489 ENTITLED "PROHIBITED CAMPAIGN CONTRIBUTIONS BY REAL ESTATE DEVELOPERS", AND SECTION 2-490 ENTITLED "PROHIBITED CAMPAIGN CONTRIBUTIONS BY LOBBYISTS ON REAL ESTATE DEVELOPMENT ISSUES", BY ADDING LANGUAGE PROVIDING THAT THE 12 MONTH PERIOD IN WHICH A PROHIBITED DONOR OF A CAMPAIGN CONTRIBUTION IS DISQUALIFIED FROM CERTAIN SPECIFIED ASSOCIATIONS WITH THE CITY SHALL COMMENCE UPON A FINAL FINDING OF VIOLATION, OR IF APPLICABLE, UPON MIAMI BEACH CITY COMMISSION ACTION ON A WAIVER REQUEST; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

Action: The Committee moved to bring this item to the next meeting of the full City Commission with some revisions/additions in language to the ordinance as follows:

- Maintain existing waiver language within the vendor ordinance and add language

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Date 5-18-05

calling for a limited waiver option.

- Add to all four ordinances of the campaign finance reform language providing for the twelve month disqualification period for violations to be triggered from the date of the finding of violation, not from the date the donee/candidate is sworn in.

2. DISCUSSION REGARDING AN ORDINANCE AMENDING CHAPTER 70 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "MISCELLANEOUS OFFENSES," TO CREATE ARTICLE VI, TO BE ENTITLED "SEX OFFENDERS" AND CREATING SECTION 70-400, ENTITLED "SEX OFFENDER RESIDENCY PROHIBITION," PROVIDING FOR A PROHIBITION FROM SEX OFFENDERS CONVICTED OF CRIMES UNDER CERTAIN FLORIDA STATUTES FROM LIVING WITHIN 2500 FEET OF SPECIFIED LOCATIONS WITHIN THE CITY OF MIAMI BEACH; PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

Mayor Dermer introduced the item explaining the background and intent as follows:

Currently under state law there is a 1,000 ft. separation requirement for anyone who is a convicted sex offender/predator from any public school, public bus stop, park or place where children congregate. This ordinance is just an expansion of the Florida law to 2,500 ft. The idea actually came while considering a waiver for the Convention Center, about one year ago, for an adult book/paraphernalia show. In this case, under Florida law, there is a 2,500 ft. distance separation that required the promoters of this event to request a waiver because of the Convention Center's proximity to Beach High.

Miami Beach is unique in that it is a city that is 7.5 miles long, has a median age of about 39, and a lot of children living here. When looking at the nature of this crime, after exploring the subject and speaking with experts, taking away the incidents of "Romeo and Juliet" and incest crimes, you are left with a body of pedophilia crimes that have an extraordinarily high recidivism rate. Experts seem to agree that we are looking at upwards of 90%, a very strong likelihood that these people will commit these crimes again on our children in our community.

When you take that into account along with the evidence that suggests that these perpetrators live close to their potential victims, and you combine that with stalking opportunities, it is very important for the safety of the City and the safety of children to ensure that we adopt this ordinance. By adopting this, the City will send a very strong message about how Miami Beach feels about this particular crime.

The enforcement issues are ones that have to be narrowly tailored. Under the ordinance we are looking at, there is a maximum penalty of a misdemeanor, 60 days. Our local law enforcement people do know the offenders that are probably the most likely and most dangerous people that are living in the community and have been doing their job watching them but this gives local law enforcement an extra tool in their ability to enforce this law. They will continue to work with FDLE and the Department of Corrections. There also is legislation coming up in Tallahassee that all of us support relating to longer sentencing and lifetime monitoring.

This is a good ordinance and it is good that Miami Beach is leading the way on this ordinance and I encourage the committee to accept it.

Commissioner Gross stated that with regards to the pedophile section; the more we can do the better and asked if this addresses the "Romeo and Juliet" cases.

Mayor Dermer explained that this is strictly cases involving victims under 16 years old. We tracked some of the criminal statutes in the state. Robert Datorre concurred that 794.065 was the main statute that was tracked and that we incorporated some portions of the Conditional Release statute which is 947.1405 but the 794.065 provided the "under 16" victim requirement. It also provided the types of offenses that were required. That was with the 1,000 ft. separator and therefore we extended it to 2,500 ft.

Commissioner Smith wanted to be clear as to what age the enforceability of the ordinance would be triggered.

Robert Datorre explained that the ordinance would apply only when the victim is under 16 years of age.

Commissioner Bower asked if "rape" can be included.

Mayor Dermer explained that if the City is going to be challenged on it, paralleling the state statute to the best of our ability is the right way to go. The state statute has been in effect since October 2004.

Robert Datorre stated that the Conditional Release statute has been in force longer than that.

Commissioner Smith asked if anyone has asserted a challenge to the state statute yet.

Robert Datorre explained that statute 794.065 has not been challenged, however, the Conditional Release has been challenged on vagueness and constitutional grounds but since it is a portion of the release of the offender and they agree to it, it is court ordered as opposed to just being statutorily imposed the courts have upheld it. Of the challenges brought so far, the statute has been sustained.

Commissioner Gross asked for an explanation regarding the penalty if the offender is found to be living in violation of this ordinance and if there is any type of fine involved.

Mayor Dermer responded that there is a punishment of up to 60 days in jail and that the penalties are up to the judge. Fines can be levied. Robert Datorre added that any subsequent offense under the ordinance will bring up to 12 months.

Commissioner Smith questioned if this would go into effect as of October 2004 or when it is passed or even earlier.

Robert Datorre explained that the effective date is essentially up to the Commission. It may be best to use the effective date of the ordinance so that any people convicted after whatever date, our ordinance takes effect are subject to this.

It would prohibit new offenders from coming in to the prohibited areas allowing the police department to concentrate enforcement efforts on those that are already being tracked.

Commissioner Bower questioned if this ordinance would allow the City to deny an existing offender that may already live here the ability to move to another location within the newly created prohibited area.

Robert Datorre explained that the ordinance, as it exists now, only discusses when the conviction was imposed. If the conviction is prior to the effective date of the ordinance, then that offender can move into and within the city.

Commissioner Gross asked why it isn't based on when the offender moves to the city.

Robert Datorre explained there would be the possibility of an ex-post facto challenge to the law. Since this would be making an additional crime and punishment on something that has already been committed and convicted. By providing an effective date that only applies to those that are convicted after the effective date of the ordinance that challenge would be eliminated. He also addressed Commissioner Bower's question that if the offender is convicted of another such crime after the effective date of the ordinance, then the subsequent conviction would be covered.

Commissioner Smith would like an addition of a civil component for landlord responsibility.

Robert Datorre stated that this would avoid an ex-post facto challenge for the person convicted prior because the ordinance effective date because the ordinance does not direct the person convicted of the crime, instead it is directed to the landlord.

Mayor Dermer asked that Mr. Datorre work together with Commissioner Smith to create an amendment to add some responsibility to the landlord.

Action: The Committee moved to approve the ordinance and bring to the full City Commission meeting scheduled for May 18, 2005 for second reading.

3. DISCUSSION REGARDING AUTOMATED EXTERNAL DEFIBRILLATORS.

Commissioner Jose Smith introduced the item and discussed the drafted ordinance. The ordinance discussed would make it mandatory for some businesses to have a defibrillator. Commissioner Smith further stated that this is an effective tool for saving lives. The cost for each defibrillator is approximately \$1,000 and should be placed in gyms, restaurants, Convention Center, and City Hall. The City should consider making defibrillators mandatory like fire extinguishers.

Commissioner Bower inquired if the community had been surveyed.

Commissioner Gross interjected that a 100 seat restaurant is going to capture too many restaurants as Lincoln Road has sidewalk cafes with 60 or 70 seats just outside.

Deborah Turner stated that current draft ordinance was patterned after the Westin ordinance.

Mr. Elliot Fisch and Mr. Bruce Cousins of AED made a presentation on the defibrillators, Life Line, sold by his company.

Commissioner Gross asked how you can tell if someone is experiencing Sudden Cardiac Arrest.

Mr. Fisch responded that the system will not operate unless someone is in Sudden Cardiac Arrest.

Commissioner Gross expressed concerned about the liability to the businesses that install a defibrillator.

Action: The Committee moved to amend the ordinance to limit the defibrillators to public city buildings, large condos, hotels and restaurants with 200 seats or more and return the item to the Neighborhood/Community Affairs Committee meeting.

4. DISCUSSION REGARDING RECOMMENDATION FROM THE ART IN PUBLIC PLACES COMMITTEE TO AMEND THE NAMING OF PUBLIC FACILITIES AND ESTABLISHMENT OF MONUMENTS OR MEMORIALS ORDINANCE, SPECIFICALLY REGARDING PROCEDURES FOR REVIEWING PROPOSALS AND REQUESTS FOR MONUMENTS AND MEMORIALS.

Action: Item deferred to the next Neighborhood/Community Affairs Committee meeting.

JMG\RCM\JJM\rfm

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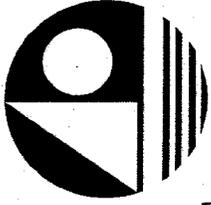
**CITY OF MIAMI BEACH
NEIGHBORHOOD/COMMUNITY AFFAIRS COMMITTEE**

APRIL 26, 2005

SIGN-IN SHEET

PLEASE PRINT LEGIBLY

NAME	ORGANIZATION / DEPT.	PHONE NO.	FAX / EMAIL
JOE FORTANA	M.B. Condo Alliance	861 0057 ³⁰⁰	
CHRIS PARRINO	MBFD	673-7130	673-7257
TAMMY YOUNG	Resident		
ELLIOT FISCH	AED Now!	888-241-9277	e-fische@ednow.com
BRUCE KENS	AED Now!	888-211-0151	BRUSE@EDNOW.COM
DOLORES MEJIA	CMB - Mayor & Comm.	673-7103	673-7096
MARGARITA GLENN	CMB - Mayor & Comm.	6437	7096
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MARIO ELBASTIWEZ	Miami Beach P.D.	5177	
DONALD PAPY	City Atty's Office	7470	



CITY OF MIAMI BEACH
NEIGHBORHOOD/COMMUNITY AFFAIRS COMMITTEE
 APRIL 26, 2005

SIGN-IN SHEET

PLEASE PRINT LEGIBLY

NAME	ORGANIZATION / DEPT.	PHONE NO.	FAX /EMAIL
Robert Datorne	CITY LEGAL	6858	
JOHN HEFFERNAN	MAYOR'S OFFICE	6457	
Courtesy Dee Rii	Unionian Network		
Pannette Rodriguez	CMB	6417	
Floyd Jordan	Fire Dept	7120	
Bubray (Patchen)	President	305 538-1420	305 538-1186
Joel Smith	CMB	305-673-7106	
Gus Lopez	procurement	6641	
Mark Scopetta	Student		
Mathie Gandy			
Saul Gross			
Vivian Guzman			

South Beach Hotel and Restaurant Association

407 Lincoln Road – Suite # 12 H – Miami Beach, Florida 33139

Phone (305) 673-0440 Fax (305) 673-9910

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Neighborhood/Community Affairs Committee
City of Miami Beach

April 26th, 2005

Re: Proposed “Sex Offender Residency Prohibition” Ordinance

Dear Committee Members;

The Mayor’s recent proposal to prohibit sex offenders from residing within 2,500 feet of any Miami Beach school or playground, etc., while I am sure well intended, does however raise several concerns as to its implementation, as follows:

Setting aside for the moment the issue of just what a sex offender is, I will focus only on the residency prohibition itself. When this matter was discussed at the April 20th Commission meeting, Commissioner Bower asked if the prohibition meant that landlords will need to get approval from the police department before they can rent to tenants. The answer from the Mayor was yes.

Question: If passed, wouldn’t this prohibition need to apply to existing as well as prospective tenants? (equal enforcement) And what about homeowners or homebuyers?

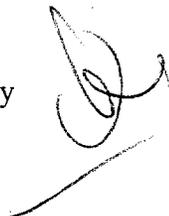
These question were not asked, but it would seem to follow that a prohibition that applied to the residency of a tenant must also apply to the residency of a property owner, and this would mean that anyone wanting to own a home on Miami Beach (or already owning a home here) that was within 2,500 feet of a school or playground would need to be subjected to a police back-ground check, as would all members of the household.

The requirement for police approval would also seem to apply equally to real estate agents as well as landlords, and would require real estate agents to obtain police department approval of a prospective buyer or tenant before they could sell or rent a home or a condo within 2,500 feet of a school or playground.

And most importantly for our hospitality industry, what about people who rent rooms in hotels? Because we are a resort town, and rent rooms and apartments to visitors - some for a few days and some for a few months - will our hotels within 2,500 feet of a school or playground be required to obtain police department approval of each hotel guest? Carried to its logical conclusion, the answer would seem to be yes.

I think that this prohibition could have serious ramifications that would render it unenforceable or unconstitutional, and I urge you to carefully evaluate the consequences of its application before adopting it.

Yours truly,
David Kelsey



SEX OFFENDER STATUTES

Statutes applicable to our ordinance.

- **§794.011, Fla. Stat. “Sexual battery.”**

Sexual batter is “oral, anal, or vaginal penetration by, or union with, the sexual organ or another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.”

- **§800.04, Fla. Stat. “Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.”**

“(4) Lewd or lascivious battery.--A person who:

(a) Engages in sexual activity with a person 12 years of age or older but less than 16 years of age; or

(b) Encourages, forces, or entices any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity commits lewd or lascivious battery”

”(5) Lewd or lascivious molestation.—

(a) A person who intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person less than 16 years of age, or forces or entices a person under 16 years of age to so touch the perpetrator, commits lewd or lascivious molestation.”

”(6) Lewd or lascivious conduct.—

”(a) A person who:

1. Intentionally touches a person under 16 years of age in a lewd or lascivious manner; or
2. Solicits a person under 16 years of age to commit a lewd or lascivious act commits lewd or lascivious conduct.”

”(7) Lewd or lascivious exhibition.—

”(a) A person who:

1. Intentionally masturbates;
2. Intentionally exposes the genitals in a lewd or lascivious manner; or
3. Intentionally commits any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual

bestiality, or the simulation of any act involving sexual activity in the presence of a victim who is less than 16 years of age, commits lewd or lascivious exhibition.

(b) A person who:

1. Intentionally masturbates;
2. Intentionally exposes the genitals in a lewd or lascivious manner; or
3. Intentionally commits any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity live over a computer on-line service, Internet service, or local bulletin board service and who knows or should know or has reason to believe that the transmission is viewed on a computer or television monitor by a victim in this state who is less than 16 years of age, commits lewd or lascivious exhibition. The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this paragraph shall not constitute a defense to a prosecution under this paragraph.”

”(8) Exception.--A mother's breastfeeding of her baby does not under any circumstance constitute a violation of this section.”

- **§827.071, Fla. Stat. “Sexual performance by a child”**

“(2) A person is guilty of the use of a child in a sexual performance if, knowing the character and content thereof, he or she employs, authorizes, or induces a child less than 18 years of age to engage in a sexual performance or, being a parent, legal guardian, or custodian of such child, consents to the participation by such child in a sexual performance.”

”(3) A person is guilty of promoting a sexual performance by a child when, knowing the character and content thereof, he or she produces, directs, or promotes any performance which includes sexual conduct by a child less than 18 years of age.

”(4) It is unlawful for any person to possess with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes any sexual conduct by a child. The possession of three or more copies of such photograph, motion picture, representation, or presentation is prima facie evidence of an intent to promote.

”(5) It is unlawful for any person to knowingly possess a photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, he or she knows to include any sexual conduct by a child. The possession of each such photograph, motion picture, exhibition, show, representation, or presentation is a separate offense.”

- **§847.0145, Fla. Stat. “Selling or buying of minors.”**

“(1) Any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfer custody of such minor, either:

(a) With knowledge that, as a consequence of the sale or transfer, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct; or

(b) With intent to promote either:

1. The engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; or

2. The rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct;

(2) Whoever purchases or otherwise obtains custody or control of a minor, or offers to purchase or otherwise obtain custody or control of a minor, either:

(a) With knowledge that, as a consequence of the purchase or obtaining of custody, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct;

(b) With intent to promote either:

1. The engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; or

2. The rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct.”

- **§947.1405, Fla. Stat. “Conditional Release”**

“(2) Any inmate who:

(a) Is convicted of a crime committed on or after October 1, 1988, and before January 1, 1994, and any inmate who is convicted of a crime committed on or after January 1, 1994, which crime is or was contained in category 1, category 2, category 3, or category 4 of

Rule 3.701 and Rule 3.988, Florida Rules of Criminal Procedure (1993), and who has served at least one prior felony commitment at a state or federal correctional institution;

(b) Is sentenced as a habitual or violent habitual offender or a violent career criminal pursuant to s. 775.084; or,

(c) Is found to be a sexual predator under s. 775.21 or former s. 775.23,”

Subject to (among others):

- Mandatory Curfew, 10pm – 6am, or other 8 hour period designated by parole commission if employment so requires.
 - If victim under 18, prohibited from living within 1000 ft. of school, day care center, park, playground designated public school bus stop, or other place where children regularly congregate.”
- **§794.065, Fla. Stat. “Unlawful place of residence for persons convicted of certain sex offenses.”**
“unlawful for any person who has been convicted of a violation of s. 794.011, s. 800.04, s. 827.071, or s. 847.0145, regardless of whether adjudication has been withheld, in which the victim of the offense was less than 16 years of age, to reside within 1,000 feet of any school, day care center, park, or playground.”
 - **§775.21, Fla. Stat. “Florida Sexual Predators Act”**
See attached.

Sexual Predators Status Qualifiers and Obligations

The designation of a person as a sexual predator is neither a sentence nor a punishment but simply a status resulting from the conviction of certain crimes.

What Constitutes a Sexual Predator?

There are two paths of qualifying as a sexual predator in the state of Florida: One way is to commit (on or after October 1, 1993) one of the several "one is enough" sexual predator offenses. The second is to commit a "second strike" sexual predator offense (on or after October 1, 1993) after having previously been found to have committed one or more of certain other listed sexual offenses.

In either instance, a written finding designating the qualifying individual as a "sexual predator" *must* be issued from the court to establish the designation of "Sexual Predator."

For purposes of determining qualifying offenses for sexual predator status, "*conviction*" means a determination of guilt, which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld. A conviction for a similar offense includes, but is not limited to, a conviction by a federal or military tribunal, including courts-martial conducted by the Armed Forces of the United States, and includes a conviction in any state of the United States.

Sexual Predators Status Qualifiers and Obligations 1

**Sexual Predators
Status Qualifiers and Obligations**

**The "One is Enough"
Predator Qualifying Offense**

A sexual predator is any person who has been convicted or is found to have committed, regardless of adjudication, or who plead nolo contendere or guilty to any of the following offenses which occurred **ON or AFTER October 1, 1993:**

Capital, Life, or First degree Felony	s. 787.01	Kidnapping of a child under the age of 13, aggravating circumstances. <i>Where the victim is a minor and the defendant is not the victim's parent</i>
	s. 787.02	False imprisonment of a child under the age of 13, aggravating circumstances. <i>Where the victim is a minor and the defendant is not the victim's parent</i>
	s. 794	Sexual Battery
	s. 847.0145	Selling or buying of minors for portrayal in a visual depiction engaging in sexually explicit conduct.
<u>Attempt</u> to commit a Capital, Life or First degree Felony	s.794	Sexual Battery Where the victim is a minor
<i>Or Any violation of a similar law of another jurisdiction.</i>		

Sexual Predators Status Qualifiers and Obligations 2

**Sexual Predators
Status Qualifiers and Obligations**

**The "Second Strike"
Predator Qualifying Offense**

A sexual predator is any person who has been convicted or is found to have committed **On or After October 1, 1993** any offense, regardless of adjudication, or who pleads nolo contendere or guilty to any of these offenses *:

Second-degree or greater Felony	s. 787.01	Kidnapping of a child under the age of 13, aggravating circumstances. <i>Where the victim is a minor and the defendant is not the victim's parent</i>
	s. 787.02	False imprisonment of a child under the age of 13, aggravating circumstances. <i>Where the victim is a minor and the defendant is not the victim's parent</i>
	s. 794	Sexual Battery
	s. 796.03	Procuring a person under the age of 18 for prostitution.
	s. 800.04	Lewd, lascivious, or indecent assault or act upon or in the presence of a child.
	s.825.1025(2)(b)	Lewd or lascivious battery upon an elderly person or disabled adult.
	s. 827.071	Child Abuse, employ, consent, promote, etc., sexual performance by a child.
	s. 847.0145	Selling or buying of minors for portrayal in a visual depiction engaging in sexually explicit conduct.
<i>Or A violation of a similar law of another jurisdiction</i>		

AND** the offender has ***previously been convicted of or found to have committed or has pled nolo contendere or guilty to, regardless of adjudication, any violation of:

787.01	Kidnapping of a child under the age of 13, aggravating circumstances. <i>Where the victim is a minor and the defendant is not the victim's parent</i>
--------	--

**Sexual Predators
Status Qualifiers and Obligations**

787.02	False imprisonment of a child under the age of 13, aggravating circumstances <i>Where the victim is a minor and the defendant is not the victim's parent.</i>
794.011 (2)	Sexual battery with injury child under 12 years of age.
794.011 (3)	Sexual battery upon person 12 or older with threats of deadly weapon or physical force.
794.011 (4)	Sexual battery on 12 year old or older (various circumstances).
794.011 (5)	Sexual battery upon 12 year old or older without serious personal injury.
794.011 (8)	Solicit or engage in sexual battery by person in familial or custodial authority on a person under 18.
794.023	Sexual Battery by multiple perpetrators.
796.03	Procuring person under 18 for prostitution.
800.04	Lewd, lascivious, or indecent assault or act upon or in the presence of a child.
825.1025	Lewd or lascivious battery upon an elderly person or disabled adult.
827.071	Child Abuse: employ, consent to, promote, etc., sexual performance by a child.
847.0133	Sell, give away etc. obscene material to a minor.
847.0135	Computer pornography.
847.0145	Selling or buying of minors for portrayal in a visual depiction engaging in sexually explicit conduct.
<i>Or A violation of a similar law of another jurisdiction.</i>	

Provided that:

- ❖ The Offender has not received, for the qualifying offense(s), a pardon for any felony or similar relief from another jurisdiction
- ❖ A conviction of the felony or similar law of another jurisdiction has not been set aside in any postconviction proceeding.
- ❖ In order to be counted as the prior offense, the felony must have resulted in a conviction sentenced separately, or adjudication of

Sexual Predators Status Qualifiers and Obligations 4

**Sexual Predators
Status Qualifiers and Obligations**

delinquency entered separately, prior to the current offense and sentenced or adjudicated separately from any other felony conviction that is to be counted as a prior felony. If the offender's prior enumerated felony was committed more than 10 years before the primary offense, it shall not be considered a prior felony if the offender has not been convicted of any other crime for a period of 10 consecutive years from the most recent date of release from confinement, supervision, or sanction, whichever is later.

**Sexual Predators
Status Qualifiers and Obligations**

Sexual Predator Obligations

Sexual predators:

- Who have registered as required under s. 775.21 are exempt from convicted felon registration as defined by s. 775.13.
- Are subject to community and public notification.
- Must register with the Florida Department of Law enforcement (FDLE) (through the sheriff's office an FDLE office, the Department of Corrections, the custodian of a local jail or a federal supervision office) within 48 hours after establishing permanent or temporary residence in this state.
- Who are not incarcerated and who reside in the community (including those under the supervision of the Department of Corrections) must - within 48 hours of initial registration - present proof of initial registration as a predator in person at the DHSMV and secure or renew a driver's license or identification card.
- Must report in person any change in permanent or temporary residence to DHSMV within 48 hours.
- Must renew *in person* their driver's license or identification card when subject to renewal.
- Must report intent to establish residence in another state to the sheriff or FDLE within 48 hours before the date they intend to leave Florida.
- Who indicate their intent to reside in another state or jurisdiction and later decide to remain in this state must, within 48 hours after the date upon which they indicated they would leave this state, notify the sheriff or the department, whichever agency is the agency to which they reported the intended change of residence, of their intent to remain in this state. *Failure to do so is a second-degree felony.*

Sexual Predators Status Qualifiers and Obligations 6

**Sexual Predators
Status Qualifiers and Obligations**

Sexual Predator Obligations Continued

Sexual predators:

- Must maintain registration with the department for the duration of their life, unless they have had their civil rights restored, or have received a full pardon or have had a conviction set aside in a postconviction proceeding for any felony sex offense that met the criteria for the sexual predator designation.
- Who were designated a sexual predator by a court ***before October 1, 1998***, and who have been lawfully released from confinement, supervision, or sanction, *whichever is later*, for ***at least 10 years*** and have not been arrested for any felony or misdemeanor offense since release, may petition the criminal division of the circuit court in the circuit in which they reside for the purpose of removing the sexual predator designation.
- Who were designated a sexual predator by a court on or ***after October 1, 1998***, who have been lawfully released from confinement, supervision, or sanction, *whichever is later*, for ***at least 20 years***, and who have not been arrested for any felony or misdemeanor offense since release may petition the criminal division of the circuit court in the circuit in which they reside for the purpose of removing the sexual predator designation.
- Who are granted relief of their predator designation, unless specified in the order, must comply with the requirements for registration as sexual offenders and other requirements provided under s. 943.0435 or s. 944.607.

**Sexual Predators
Status Qualifiers and Obligations**

Sexual Predator Obligations Continued

Sexual predators:

- Who obtain an order from the court that imposed the order designating them as a sexual predator which removes such designation, shall forward a certified copy of the written findings or order to the department in order to have the sexual predator designation removed from the sexual predator registry.
- *Who, except as otherwise specifically provided, fail to register or who fail, after registration, to maintain, acquire, or renew a driver's license or identification card or provide required location information, or who otherwise fail, by act or omission, to comply with the requirements of the Sexual Predator Act, commit a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.*
- *Who have been convicted of or found to have committed, or have pled nolo contendere or guilty to, regardless of adjudication, any violation of s. 794.011(2), (3), (4), (5), or (8); s. 794.023; s. 800.04; s. 827.071; s. 847.0133; or s. 847.0145, or a violation of a similar law of another jurisdiction, when the victim of the offense was a minor, and who work, whether for compensation or as a volunteer, at any business, school, day care center, park, playground, or other place where children regularly congregate, commit a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084*

applies to any offense that is prosecuted on or after July 1, 2004.

History.—s. 1, ch. 4915, 1901; RS 2357; GS 3181, 3182; s. 1, ch. 16962, 1935; s. 10, ch. 28484, 1951; s. 1, ch. 75-275; s. 1, ch. 77-174; s. 12, ch. 85-63; s. 4, ch. 89-143; s. 2, ch. 95-156; s. 17, ch. 95-158; s. 139, ch. 95-418; s. 1, ch. 96-322; s. 4, ch. 96-409; s. 1, ch. 97-36; s. 1, ch. 97-104; s. 17, ch. 98-174; s. 7, ch. 2001-246; s. 1, ch. 2001-102; s. 1, ch. 2002-188.

06, 915.03, 932.465.

Additional penalties.—In addition to any penalty provided by law, a person who is convicted of a sale of or trafficking in, or possession of, a controlled substance which is a felony, or who is convicted of an offense under the laws of this state, would be convicted of an offense committed in this state, would be convicted of selling or trafficking in, or controlling a controlled substance under...

applying for employment by the person unless:

1. The person has successfully completed all sentences of any sanctions imposed by the court, or by law; or

2. The person has successfully completed all sentences of any sanctions imposed by the court, or by law; or

3. The person has successfully completed all sentences of any sanctions imposed by the court, or by law; or

4. The person has successfully completed all sentences of any sanctions imposed by the court, or by law; or

5. The person has successfully completed all sentences of any sanctions imposed by the court, or by law; or

6. The person has successfully completed all sentences of any sanctions imposed by the court, or by law; or

7. The person has successfully completed all sentences of any sanctions imposed by the court, or by law; or

8. The person has successfully completed all sentences of any sanctions imposed by the court, or by law; or

reissue or reinstate such license, permit, or certification. The licensee, permittee, or certificateholder under supervision may:

1. Seek evaluation and enrollment in, and once enrolled maintain enrollment in until completion, a drug treatment and rehabilitation program which is approved or regulated by the Department of Children and Family Services, unless it is deemed by the program that the person does not have a substance abuse problem. The treatment and rehabilitation program may be specified by:

a. The court, in the case of court-ordered supervisory sanctions;

b. The Parole Commission, in the case of parole, control release, or conditional release; or

c. The Department of Corrections, in the case of imprisonment or any other supervision required by law.

2. Submit to periodic urine drug testing pursuant to procedures prescribed by the Department of Corrections. If the person is indigent, the costs shall be paid by the Department of Corrections; or

(c) The person has successfully completed an appropriate program under the Correctional Education Program.

The provisions of this section do not apply to any of the taxes, fees, or permits regulated, controlled, or administered by the Department of Revenue in accordance with the provisions of s. 213.05.

History.—s. 2, ch. 90-266; s. 21, ch. 92-310; s. 13, ch. 95-325; s. 292, ch. 99-8.

775.21 The Florida Sexual Predators Act.—

(1) SHORT TITLE.—This section may be cited as "The Florida Sexual Predators Act."

(2) DEFINITIONS.—As used in this section, the term:

(a) "Chief of police" means the chief law enforcement officer of a municipality.

(b) "Community" means any county where the sexual predator lives or otherwise establishes or maintains a temporary or permanent residence.

(c) "Conviction" means a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld. A conviction for a similar offense includes, but is not limited to, a conviction by a federal or military tribunal, including courts-martial conducted by the Armed Forces of the United States, and includes a conviction or entry of a plea of guilty or nolo contendere resulting in a sanction in any state of the United States or other jurisdiction. A sanction includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility.

(d) "Department" means the Department of Law Enforcement.

(e) "Entering the county" includes being discharged from a correctional facility or jail or secure treatment facility within the county or being under supervision within the county for the commission of a violation enumerated in subsection (4).

(f) "Permanent residence" means a place where the person abides, lodges, or resides for 14 or more consecutive days.

(g) "Temporary residence" means a place where the person abides, lodges, or resides for a period of 14 or more days in the aggregate during any calendar year and which is not the person's permanent address; for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state; or a place where the person routinely abides, lodges, or resides for a period of 4 or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence, including any out-of-state address.

(h) "Institution of higher education" means a community college, college, state university, or independent postsecondary institution.

(i) "Change in enrollment or employment status" means the commencement or termination of enrollment or employment or a change in location of enrollment or employment.

(3) LEGISLATIVE FINDINGS AND PURPOSE; LEGISLATIVE INTENT.—

(a) Repeat sexual offenders, sexual offenders who use physical violence, and sexual offenders who prey on children are sexual predators who present an extreme threat to the public safety. Sexual offenders are extremely likely to use physical violence and to repeat their offenses, and most sexual offenders commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sexual offender victimization to society at large, while incalculable, clearly exorbitant.

(b) The high level of threat that a sexual predator presents to the public safety, and the long-term effects suffered by victims of sex offenses, provide the state with sufficient justification to implement a strategy that includes:

1. Incarcerating sexual predators and maintaining adequate facilities to ensure that decisions to release sexual predators into the community are not made on the basis of inadequate space.

2. Providing for specialized supervision of sexual predators who are in the community by specially trained probation officers with low caseloads, as described in ss. 947.1405(7) and 948.30. The sexual predator is subject to specified terms and conditions implemented at sentencing or at the time of release from incarceration, with a requirement that those who are financially able must pay all or part of the costs of supervision.

3. Requiring the registration of sexual predators, with a requirement that complete and accurate information be maintained and accessible for use by law enforcement authorities, communities, and the public.

4. Providing for community and public notification concerning the presence of sexual predators.

5. Prohibiting sexual predators from working with children, either for compensation or as a volunteer.

(c) The state has a compelling interest in protecting the public from sexual predators and in protecting children from predatory sexual activity, and there is sufficient justification for requiring sexual predators to register and for requiring community and public notification of the presence of sexual predators.

(d) It is the purpose of the Legislature that, upon the court's written finding that an offender is a sexual predator, in order to protect the public, it is necessary that the sexual predator be registered with the department and that members of the community and the public be notified of the sexual predator's presence. The designation of a person as a sexual predator is neither a sentence nor a punishment but simply a status resulting from the conviction of certain crimes.

(e) It is the intent of the Legislature to address the problem of sexual predators by:

1. Requiring sexual predators supervised in the community to have special conditions of supervision and to be supervised by probation officers with low caseloads;

2. Requiring sexual predators to register with the Florida Department of Law Enforcement, as provided in this section; and

3. Requiring community and public notification of the presence of a sexual predator, as provided in this section.

(4) SEXUAL PREDATOR CRITERIA.—

(a) For a current offense committed on or after October 1, 1993, upon conviction, an offender shall be designated as a "sexual predator" under subsection (5), and subject to registration under subsection (6) and community and public notification under subsection (7) if:

1. The felony is:

a. A capital, life, or first-degree felony violation, or any attempt thereof, of s. 787.01 or s. 787.02, where the victim is a minor and the defendant is not the victim's parent, or of chapter 794, s. 800.04, or s. 847.0145, or a violation of a similar law of another jurisdiction; or

b. Any felony violation, or any attempt thereof, of s. 787.01, s. 787.02, or s. 787.025, where the victim is a minor and the defendant is not the victim's parent; chapter 794, excluding ss. 794.011(10) and 794.0235; s. 796.03; s. 800.04; s. 825.1025(2)(b); s. 827.071; or s. 847.0145; or a violation of a similar law of another jurisdiction, and the offender has previously been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, any violation of s. 787.01, s. 787.02, or s. 787.025, where the victim is a minor and the defendant is not the victim's parent; s. 794.011(2), (3), (4), (5), or (8); s. 794.05; s. 796.03; s. 800.04; s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135; or s. 847.0145, or a violation of a similar law of another jurisdiction;

2. The offender has not received a pardon for any felony or similar law of another jurisdiction that is necessary for the operation of this paragraph; and

3. A conviction of a felony or similar law of another jurisdiction necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.

(b) In order to be counted as a prior felony for purposes of this subsection, the felony must have resulted in a conviction sentenced separately, or an adjudication of delinquency entered separately, prior to the current offense and sentenced or adjudicated separately from any other felony conviction that is to be counted as

a prior felony. If the offender's prior enumerated felony was committed more than 10 years before the primary offense, it shall not be considered a prior felony under this subsection if the offender has not been convicted of any other crime for a period of 10 consecutive years from the most recent date of release from confinement, supervision, or sanction, whichever is later.

(c) If an offender has been registered as a sexual predator by the Department of Corrections, the department, or any other law enforcement agency and if:

1. The court did not, for whatever reason, make a written finding at the time of sentencing that the offender was a sexual predator; or

2. The offender was administratively registered as a sexual predator because the Department of Corrections, the department, or any other law enforcement agency obtained information that indicated that the offender met the criteria for designation as a sexual predator based on a violation of a similar law in another jurisdiction,

the department shall remove that offender from the department's list of sexual predators and, for an offender described under subparagraph 1., shall notify the state attorney who prosecuted the offense that met the criteria for administrative designation as a sexual predator, and, for an offender described under this subparagraph, shall notify the state attorney of the county where the offender establishes or maintains a permanent or temporary residence. The state attorney shall bring the matter to the court's attention in order to establish that the offender meets the criteria for designation as a sexual predator. If the court makes a written finding that the offender is a sexual predator, the offender must be designated as a sexual predator, must register or be registered as a sexual predator with the department as provided in subsection (6), and is subject to the community and public notification as provided in subsection (7). If the court does not make a written finding that the offender is a sexual predator, the offender may not be designated as a sexual predator with respect to that offense and is not required to register or be registered as a sexual predator with the department.

(d) An offender who has been determined to be a sexually violent predator pursuant to a civil commitment proceeding under chapter 394 shall be designated as a "sexual predator" under subsection (5) and subject to registration under subsection (6) and community and public notification under subsection (7).

(5) SEXUAL PREDATOR DESIGNATION.—An offender is designated as a sexual predator as follows:

(a)1. An offender who meets the sexual predator criteria described in paragraph (4)(d) is a sexual predator, and the court shall make a written finding at the time such offender is determined to be a sexually violent predator under chapter 394 that such person meets the criteria for designation as a sexual predator for purposes of this section. The clerk shall transmit a copy of the order containing the written finding to the department within 48 hours after the entry of the order;

2. An offender who meets the sexual predator criteria described in paragraph (4)(a) who is before the

court for sentencing for or after October 1, 1993, the sentencing court must make a written finding at the time of sentencing that the offender is a sexual predator, and the clerk of the court shall transmit a copy of the order containing the written finding to the department within 48 hours after the entry of the order.

3. If the Department of Corrections, the department, or any other law enforcement agency obtains information which indicates or maintains evidence in this state that the offender has committed a similar violation of a similar law in another jurisdiction, the state attorney shall notify the state attorney of the county where the offender establishes or maintains a permanent or temporary residence of the offender. The state attorney shall bring the matter to the court's attention in order to establish that the offender meets the criteria for designation as a sexual predator. If the court makes a written finding that the offender is a sexual predator, the offender must be designated as a sexual predator, must register or be registered as a sexual predator with the department as provided in subsection (6), and is subject to the community and public notification as provided in subsection (7). If the court does not make a written finding that the offender is a sexual predator, the offender may not be designated as a sexual predator with respect to that offense and is not required to register or be registered as a sexual predator with the department.

When the court makes a written finding that the offender is a sexual predator, the offender must be designated as a sexual predator, must register or be registered as a sexual predator with the department as provided in subsection (6), and is subject to the community and public notification as provided in subsection (7). If the court does not make a written finding that the offender is a sexual predator, the offender may not be designated as a sexual predator with respect to that offense and is not required to register or be registered as a sexual predator with the department.

(b) If a sexual predator is determined to be a sexually violent predator pursuant to a civil commitment proceeding under chapter 394, the offender shall be designated as a "sexual predator" under subsection (5) and subject to registration under subsection (6) and community and public notification under subsection (7).

(c) If the Department of Corrections, the department, or any other law enforcement agency obtains information which indicates or maintains evidence in this state that the offender has committed a similar violation of a similar law in another jurisdiction, the state attorney shall notify the state attorney of the county where the offender establishes or maintains a permanent or temporary residence of the offender. The state attorney shall bring the matter to the court's attention in order to establish that the offender meets the criteria for designation as a sexual predator. If the court makes a written finding that the offender is a sexual predator, the offender must be designated as a sexual predator, must register or be registered as a sexual predator with the department as provided in subsection (6), and is subject to the community and public notification as provided in subsection (7). If the court does not make a written finding that the offender is a sexual predator, the offender may not be designated as a sexual predator with respect to that offense and is not required to register or be registered as a sexual predator with the department.

court for sentencing for a current offense committed on or after October 1, 1993, is a sexual predator, and the sentencing court must make a written finding at the time of sentencing that the offender is a sexual predator, and the clerk of the court shall transmit a copy of the order containing the written finding to the department within 48 hours after the entry of the order; or

3. If the Department of Corrections, the department, or any other law enforcement agency obtains information which indicates that an offender who establishes or maintains a permanent or temporary residence in this state meets the sexual predator criteria described in paragraph (4)(a) or paragraph (4)(d) because the offender was civilly committed or committed a similar violation in another jurisdiction on or after October 1, 1993, the Department of Corrections, the department, or the law enforcement agency shall notify the state attorney of the county where the offender establishes or maintains a permanent or temporary residence of the offender's presence in the community. The state attorney shall file a petition with the criminal division of the circuit court for the purpose of holding a hearing to determine if the offender's criminal record or record of civil commitment from another jurisdiction meets the sexual predator criteria. If the court finds that the offender meets the sexual predator criteria because the offender has violated a similar law or similar laws in another jurisdiction, the court shall make a written finding that the offender is a sexual predator.

When the court makes a written finding that an offender is a sexual predator, the court shall inform the sexual predator of the registration and community and public notification requirements described in this section. Within 48 hours after the court designating an offender as a sexual predator, the clerk of the circuit court shall transmit a copy of the court's written sexual predator finding to the department. If the offender is sentenced to a term of imprisonment or supervision, a copy of the court's written sexual predator finding must be submitted to the Department of Corrections.

(b) If a sexual predator is not sentenced to a term of imprisonment, the clerk of the court shall ensure that the sexual predator's fingerprints are taken and forwarded to the department within 48 hours after the court renders its written sexual predator finding. The fingerprint card shall be clearly marked, "Sexual Predator Registration Card." The clerk of the court that convicts and sentences the sexual predator for the offense or offenses described in subsection (4) shall forward to the department and to the Department of Corrections a certified copy of any order entered by the court imposing any special condition or restriction on the sexual predator which restricts or prohibits access to the victim, if the victim is a minor, or to other minors.

(c) If the Department of Corrections, the department, or any other law enforcement agency obtains information which indicates that an offender meets the sexual predator criteria but the court did not make a written finding that the offender is a sexual predator as required in paragraph (a), the Department of Corrections, the department, or the law enforcement agency shall notify the state attorney who prosecuted the

offense for offenders described in subparagraph (a)1., or the state attorney of the county where the offender establishes or maintains a residence upon first entering the state for offenders described in subparagraph (a)3. The state attorney shall bring the matter to the court's attention in order to establish that the offender meets the sexual predator criteria. If the state attorney fails to establish that an offender meets the sexual predator criteria and the court does not make a written finding that an offender is a sexual predator, the offender is not required to register with the department as a sexual predator. The Department of Corrections, the department, or any other law enforcement agency shall not administratively designate an offender as a sexual predator without a written finding from the court that the offender is a sexual predator.

(d) A person who establishes or maintains a residence in this state and who has not been designated as a sexual predator by a court of this state but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person was a resident of that state or jurisdiction, shall register in the manner provided in s. 943.0435 or s. 944.607 and shall be subject to community and public notification as provided in s. 943.0435 or s. 944.607. A person who meets the criteria of this section is subject to the requirements and penalty provisions of s. 943.0435 or s. 944.607 until the person provides the department with an order issued by the court that designated the person as a sexual predator, as a sexually violent predator, or by another sexual offender designation in the state or jurisdiction in which the order was issued which states that such designation has been removed or demonstrates to the department that such designation, if not imposed by a court, has been removed by operation of law or court order in the state or jurisdiction in which the designation was made, and provided such person no longer meets the criteria for registration as a sexual offender under the laws of this state.

(6) REGISTRATION.—

(a) A sexual predator must register with the department by providing the following information to the department:

1. Name, social security number, age, race, sex, date of birth, height, weight, hair and eye color, photograph, address of legal residence and address of any current temporary residence, within the state or out of state, including a rural route address and a post office box, date and place of any employment, date and place of each conviction, fingerprints, and a brief description of the crime or crimes committed by the offender. A post office box shall not be provided in lieu of a physical residential address.

a. If the sexual predator's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual predator shall also provide to the department written notice of the vehicle identification number; the license tag number; the registration number; and a description, includ-

ing color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If a sexual predator's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual predator shall also provide to the department written notice of the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

b. If the sexual predator is enrolled, employed, or carrying on a vocation at an institution of higher education in this state, the sexual predator shall also provide to the department the name, address, and county of each institution, including each campus attended, and the sexual predator's enrollment or employment status. Each change in enrollment or employment status shall be reported in person at the sheriff's office, or the Department of Corrections if the sexual predator is in the custody or control of or under the supervision of the Department of Corrections, within 48 hours after any change in status. The sheriff or the Department of Corrections shall promptly notify each institution of the sexual predator's presence and any change in the sexual predator's enrollment or employment status.

2. Any other information determined necessary by the department, including criminal and corrections records; nonprivileged personnel and treatment records; and evidentiary genetic markers when available.

(b) If the sexual predator is in the custody or control of, or under the supervision of, the Department of Corrections, or is in the custody of a private correctional facility, the sexual predator must register with the Department of Corrections. The Department of Corrections shall provide to the department registration information and the location of, and local telephone number for, any Department of Corrections office that is responsible for supervising the sexual predator. In addition, the Department of Corrections shall notify the department if the sexual predator escapes or absconds from custody or supervision or if the sexual predator dies.

(c) If the sexual predator is in the custody of a local jail, the custodian of the local jail shall register the sexual predator and forward the registration information to the department. The custodian of the local jail shall also take a digitized photograph of the sexual predator while the sexual predator remains in custody and shall provide the digitized photograph to the department. The custodian shall notify the department if the sexual predator escapes from custody or dies.

(d) If the sexual predator is under federal supervision, the federal agency responsible for supervising the sexual predator may forward to the department any information regarding the sexual predator which is consistent with the information provided by the Department of Corrections under this section, and may indicate whether use of the information is restricted to law enforcement purposes only or may be used by the department for purposes of public notification.

(e) If the sexual predator is not in the custody or control of, or under the supervision of, the Department of Corrections, or is not in the custody of a private correctional facility, and establishes or maintains a resi-

dence in the state, the sexual predator shall register in person at an office of the department, or at the sheriff's office in the county in which the predator establishes or maintains a residence, within 48 hours after establishing permanent or temporary residence in this state. Any change in the sexual predator's permanent or temporary residence or name, after the sexual predator registers in person at an office of the department or at the sheriff's office, shall be accomplished in the manner provided in paragraphs (g), (i), and (j). If a sexual predator registers with the sheriff's office, the sheriff shall take a photograph and a set of fingerprints of the predator and forward the photographs and fingerprints to the department, along with the information that the predator is required to provide pursuant to this section.

(f) Within 48 hours after the registration required under paragraph (a) or paragraph (e), a sexual predator who is not incarcerated and who resides in the community, including a sexual predator under the supervision of the Department of Corrections, shall register in person at a driver's license office of the Department of Highway Safety and Motor Vehicles and shall present proof of registration. At the driver's license office the sexual predator shall:

1. If otherwise qualified, secure a Florida driver's license, renew a Florida driver's license, or secure an identification card. The sexual predator shall identify himself or herself as a sexual predator who is required to comply with this section, provide his or her place of permanent or temporary residence, including a rural route address and a post office box, and submit to the taking of a photograph for use in issuing a driver's license, renewed license, or identification card, and for use by the department in maintaining current records of sexual predators. A post office box shall not be provided in lieu of a physical residential address. If the sexual predator's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual predator shall also provide to the Department of Highway Safety and Motor Vehicles the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If a sexual predator's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual predator shall also provide to the Department of Highway Safety and Motor Vehicles the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

2. Pay the costs assessed by the Department of Highway Safety and Motor Vehicles for issuing or renewing a driver's license or identification card as required by this section.

3. Provide, upon request, any additional information necessary to confirm the identity of the sexual predator, including a set of fingerprints.

(g)1. Each time a sexual predator's driver's license or identification card is subject to renewal, and without regard to the status of the predator's driver's

license or identical change of the predator's name by process, the predator license office and specified in paragraph Safety and Motor Vehicle and to the Department of Informa Notwithstanding the Department of Informa is authorized to receive photograph or digital of Law Enforcement of sexual predators

2. A sexual predator who is not incarcerated and who resides in the community, including a sexual predator under the supervision of the Department of Corrections, shall register in person at a driver's license office of the Department of Highway Safety and Motor Vehicles and shall present proof of registration. At the driver's license office the sexual predator shall:

1. If otherwise qualified, secure a Florida driver's license, renew a Florida driver's license, or secure an identification card. The sexual predator shall identify himself or herself as a sexual predator who is required to comply with this section, provide his or her place of permanent or temporary residence, including a rural route address and a post office box, and submit to the taking of a photograph for use in issuing a driver's license, renewed license, or identification card, and for use by the department in maintaining current records of sexual predators. A post office box shall not be provided in lieu of a physical residential address. If the sexual predator's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual predator shall also provide to the Department of Highway Safety and Motor Vehicles the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If a sexual predator's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual predator shall also provide to the Department of Highway Safety and Motor Vehicles the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

2. Pay the costs assessed by the Department of Highway Safety and Motor Vehicles for issuing or renewing a driver's license or identification card as required by this section.

3. Provide, upon request, any additional information necessary to confirm the identity of the sexual predator, including a set of fingerprints.

(g)1. Each time a sexual predator's driver's license or identification card is subject to renewal, and without regard to the status of the predator's driver's

al predator shall register in department, or at the sheriff's office if the predator establishes residence in this state. Any predator's permanent or temporary residence shall be registered with the department or at the sheriff's office in the manner provided in paragraphs (i), and (j). If a sexual predator's office, the sheriff shall require fingerprints of the predator and fingerprints to the information that the predator provides pursuant to this section.

the registration required in paragraph (e), a sexual predator who resides in the community under the supervision of corrections, shall register in the office of the Department of Highway Safety and Motor Vehicles and shall present a driver's license office the

secure a Florida driver's license, or secure an identification card, or secure an identification card for a sexual predator who is required to provide his or her place of residence, including a rural mailbox, and submit to the department in issuing a driver's identification card, and for maintaining current records of the mailbox shall not be a potential address. If the residence is a motor vehicle, manufactured home, as defined in chapter 318, a sexual predator shall also provide the Department of Highway Safety and Motor Vehicles the manufacturer's serial number, live-aboard vessel, or number; and a description, vessel, live-aboard ves-

by the Department of Highway Safety and Motor Vehicles for issuing or identification card as

any additional information of the sexual predator's fingerprints.

al predator's driver's license subject to renewal, and, the predator's driver's

license or identification card, within 48 hours after any change of the predator's residence or change in the predator's name by reason of marriage or other legal process, the predator shall report in person to a driver's license office and shall be subject to the requirements specified in paragraph (f). The Department of Highway Safety and Motor Vehicles shall forward to the department and to the Department of Corrections all photographs and information provided by sexual predators. Notwithstanding the restrictions set forth in s. 322.142, the Department of Highway Safety and Motor Vehicles is authorized to release a reproduction of a color photograph or digital-image license to the Department of Law Enforcement for purposes of public notification of sexual predators as provided in this section.

2. A sexual predator who vacates a permanent residence and fails to establish or maintain another permanent or temporary residence shall, within 48 hours after vacating the permanent residence, report in person to the department or the sheriff's office of the county in which he or she is located. The sexual predator shall specify the date upon which he or she intends to or did vacate such residence. The sexual predator must provide or update all of the registration information required under paragraph (a). The sexual predator must provide an address for the residence or other location that he or she is or will be occupying during the time in which he or she fails to establish or maintain a permanent or temporary residence.

3. A sexual predator who remains at a permanent residence after reporting his or her intent to vacate such residence shall, within 48 hours after the date upon which the predator indicated he or she would or did vacate such residence, report in person to the agency to which he or she reported pursuant to subparagraph 2. for the purpose of reporting his or her address at such residence. If the sheriff receives the report, the sheriff shall promptly convey the information to the department. An offender who makes a report as required under subparagraph 2. but fails to make a report as required under this subparagraph commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(h) If the sexual predator registers at an office of the department, the department must notify the sheriff and the state attorney of the county and, if applicable, the police chief of the municipality, where the sexual predator maintains a residence within 48 hours after the sexual predator registers with the department.

(i) A sexual predator who intends to establish residence in another state or jurisdiction shall report in person to the sheriff of the county of current residence or the department within 48 hours before the date he or she intends to leave this state to establish residence in another state or jurisdiction. The sexual predator must provide to the sheriff or department the address, municipality, county, and state of intended residence. The sheriff shall promptly provide to the department the information received from the sexual predator. The department shall notify the statewide law enforcement agency, or a comparable agency, in the intended state or jurisdiction of residence of the sexual predator's intended residence. The failure of a sexual predator to

provide his or her intended place of residence is punishable as provided in subsection (10).

(j) A sexual predator who indicates his or her intent to reside in another state or jurisdiction and later decides to remain in this state shall, within 48 hours after the date upon which the sexual predator indicated he or she would leave this state, report in person to the sheriff or the department, whichever agency is the agency to which the sexual predator reported the intended change of residence, of his or her intent to remain in this state. If the sheriff is notified by the sexual predator that he or she intends to remain in this state, the sheriff shall promptly report this information to the department. A sexual predator who reports his or her intent to reside in another state or jurisdiction, but who remains in this state without reporting to the sheriff or the department in the manner required by this paragraph, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(k)1. The department is responsible for the on-line maintenance of current information regarding each registered sexual predator. The department must maintain hotline access for state, local, and federal law enforcement agencies to obtain instantaneous locator file and offender characteristics information on all released registered sexual predators for purposes of monitoring, tracking, and prosecution. The photograph and fingerprints do not have to be stored in a computerized format.

2. The department's sexual predator registration list, containing the information described in subparagraph (a)1., is a public record. The department is authorized to disseminate this public information by any means deemed appropriate, including operating a toll-free telephone number for this purpose. When the department provides information regarding a registered sexual predator to the public, department personnel must advise the person making the inquiry that positive identification of a person believed to be a sexual predator cannot be established unless a fingerprint comparison is made, and that it is illegal to use public information regarding a registered sexual predator to facilitate the commission of a crime.

3. The department shall adopt guidelines as necessary regarding the registration of sexual predators and the dissemination of information regarding sexual predators as required by this section.

(l) A sexual predator must maintain registration with the department for the duration of his or her life, unless the sexual predator has received a full pardon or has had a conviction set aside in a postconviction proceeding for any offense that met the criteria for the sexual predator designation. However, a sexual predator who was designated as a sexual predator by a court before October 1, 1998, and who has been lawfully released from confinement, supervision, or sanction, whichever is later, for at least 10 years and has not been arrested for any felony or misdemeanor offense since release, may petition the criminal division of the circuit court in the circuit in which the sexual predator resides for the purpose of removing the sexual predator designation. A sexual predator who was designated a

sexual predator by a court on or after October 1, 1998, who has been lawfully released from confinement, supervision, or sanction, whichever is later, for at least 20 years, and who has not been arrested for any felony or misdemeanor offense since release may petition the criminal division of the circuit court in the circuit in which the sexual predator resides for the purpose of removing the sexual predator designation. The court may grant or deny such relief if the petitioner demonstrates to the court that he or she has not been arrested for any crime since release, the requested relief complies with the provisions of the federal Jacob Wetterling Act, as amended, and any other federal standards applicable to the removal of the designation as a sexual predator or required to be met as a condition for the receipt of federal funds by the state, and the court is otherwise satisfied that the petitioner is not a current or potential threat to public safety. The state attorney in the circuit in which the petition is filed must be given notice of the petition at least 3 weeks before the hearing on the matter. The state attorney may present evidence in opposition to the requested relief or may otherwise demonstrate the reasons why the petition should be denied. If the court denies the petition, the court may set a future date at which the sexual predator may again petition the court for relief, subject to the standards for relief provided in this paragraph. Unless specified in the order, a sexual predator who is granted relief under this paragraph must comply with the requirements for registration as a sexual offender and other requirements provided under s. 943.0435 or s. 944.607. If a petitioner obtains an order from the court that imposed the order designating the petitioner as a sexual predator which removes such designation, the petitioner shall forward a certified copy of the written findings or order to the department in order to have the sexual predator designation removed from the sexual predator registry.

The sheriff shall promptly provide to the department the information received from the sexual predator.

(7) COMMUNITY AND PUBLIC NOTIFICATION.

(a) Law enforcement agencies must inform members of the community and the public of a sexual predator's presence. Upon notification of the presence of a sexual predator, the sheriff of the county or the chief of police of the municipality where the sexual predator establishes or maintains a permanent or temporary residence shall notify members of the community and the public of the presence of the sexual predator in a manner deemed appropriate by the sheriff or the chief of police. Within 48 hours after receiving notification of the presence of a sexual predator, the sheriff of the county or the chief of police of the municipality where the sexual predator temporarily or permanently resides shall notify each licensed day care center, elementary school, middle school, and high school within a 1-mile radius of the temporary or permanent residence of the sexual predator of the presence of the sexual predator. Information provided to members of the community and the public regarding a sexual predator must include:

1. The name of the sexual predator;
2. A description of the sexual predator, including a photograph;

3. The sexual predator's current address, including the name of the county or municipality if known;

4. The circumstances of the sexual predator's offense or offenses; and

5. Whether the victim of the sexual predator's offense or offenses was, at the time of the offense, a minor or an adult.

This paragraph does not authorize the release of the name of any victim of the sexual predator.

(b) The sheriff or the police chief may coordinate the community and public notification efforts with the department. Statewide notification to the public is authorized, as deemed appropriate by local law enforcement personnel and the department.

(c) The department shall notify the public of all designated sexual predators through the Internet. The Internet notice shall include the information required by paragraph (a).

(d) The department shall adopt a protocol to assist law enforcement agencies in their efforts to notify the community and the public of the presence of sexual predators.

(8) VERIFICATION.—The department and the Department of Corrections shall implement a system for verifying the addresses of sexual predators. The system must be consistent with the provisions of the federal Jacob Wetterling Act, as amended, and any other federal standards applicable to such verification or required to be met as a condition for the receipt of federal funds by the state. The Department of Corrections shall verify the addresses of sexual predators who are not incarcerated but who reside in the community under the supervision of the Department of Corrections. County and local law enforcement agencies, in conjunction with the department, shall verify the addresses of sexual predators who are not under the care, custody, control, or supervision of the Department of Corrections.

(9) IMMUNITY.—The department, the Department of Highway Safety and Motor Vehicles, the Department of Corrections, any law enforcement agency in this state, and the personnel of those departments; an elected or appointed official, public employee, or school administrator; or an employee, agency, or any individual or entity acting at the request or upon the direction of any law enforcement agency is immune from civil liability for damages for good faith compliance with the requirements of this section or for the release of information under this section, and shall be presumed to have acted in good faith in compiling, recording, reporting, or releasing the information. The presumption of good faith is not overcome if a technical or clerical error is made by the department, the Department of Highway Safety and Motor Vehicles, the Department of Corrections, the personnel of those departments, or any individual or entity acting at the request or upon the direction of any of those departments in compiling or providing information, or if information is incomplete or incorrect because a sexual predator fails to report or falsely reports his or her current place of permanent or temporary residence.

(10) PENALTIES

(a) Except as a sexual predator who registration, to mail license or identification required location information; who fails to tion with vacating a wise fails, by act requirements of this third degree, punish 775.083, or s. 775.0

(b) A sexual pre found to have comm or guilty to, regardle attempted violator 787.025, where the is not the victim's p (B); s. 794.05; s. 847.0133; or s. 847. of another jurisdic was a minor, and v tion or as a voluntee center, park, playgr regularly congrega degree, punishable 775.083, or s. 775.0

(c) Any person mation relating to a section, or a sexual or s. 944.607, to set or offender; who false information rel which the person r ords information; or information with the tion, including docu information provide public records inform agencies on v means of communi the first degree, pun s. 775.083.

(d) A sexual pre sion in violation of the act or omission omission was comm tered address of th which the convict offenses that meet l as a sexual predato be prosecuted for county in which he predator.

(e) An arrest or service of an inform of this section, or an tion of this section to register when th advised of his or l under subsection l immediately registe ing such arrest, s

(10) PENALTIES.—

(a) Except as otherwise specifically provided, a sexual predator who fails to register; who fails, after registration, to maintain, acquire, or renew a driver's license or identification card; who fails to provide required location information or change-of-name information; who fails to make a required report in connection with vacating a permanent residence; or who otherwise fails, by act or omission, to comply with the requirements of this section, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A sexual predator who has been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, any violation, or attempted violation, of s. 787.01, s. 787.02, or s. 787.025, where the victim is a minor and the defendant is not the victim's parent; s. 794.011(2), (3), (4), (5), or (8); s. 794.05; s. 796.03; s. 800.04; s. 827.071; s. 847.0133; or s. 847.0145, or a violation of a similar law of another jurisdiction, when the victim of the offense was a minor, and who works, whether for compensation or as a volunteer, at any business, school, day care center, park, playground, or other place where children regularly congregate, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Any person who misuses public records information relating to a sexual predator, as defined in this section, or a sexual offender, as defined in s. 943.0435 or s. 944.607, to secure a payment from such a predator or offender; who knowingly distributes or publishes false information relating to such a predator or offender which the person misrepresents as being public records information; or who materially alters public records information with the intent to misrepresent the information, including documents, summaries of public records information provided by law enforcement agencies, or public records information displayed by law enforcement agencies on websites or provided through other means of communication, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(d) A sexual predator who commits any act or omission in violation of this section may be prosecuted for the act or omission in the county in which the act or omission was committed, the county of the last registered address of the sexual predator, or the county in which the conviction occurred for the offense or offenses that meet the criteria for designating a person as a sexual predator. In addition, a sexual predator may be prosecuted for any such act or omission in the county in which he or she was designated a sexual predator.

(e) An arrest on charges of failure to register, the service of an information or a complaint for a violation of this section, or an arraignment on charges for a violation of this section constitutes actual notice of the duty to register when the predator has been provided and advised of his or her statutory obligation to register under subsection (6). A sexual predator's failure to immediately register as required by this section following such arrest, service, or arraignment constitutes

grounds for a subsequent charge of failure to register. A sexual predator charged with the crime of failure to register who asserts, or intends to assert, a lack of notice of the duty to register as a defense to a charge of failure to register shall immediately register as required by this section. A sexual predator who is charged with a subsequent failure to register may not assert the defense of a lack of notice of the duty to register.

(f) Registration following such arrest, service, or arraignment is not a defense and does not relieve the sexual predator of criminal liability for the failure to register.

History.—s. 1, ch. 93-277; s. 1, ch. 95-264; s. 54, ch. 95-283; s. 61, ch. 96-388; s. 5, ch. 97-299; s. 3, ch. 98-81; s. 1, ch. 98-267; s. 1, ch. 2000-207; s. 3, ch. 2000-246; s. 113, ch. 2000-349; s. 1, ch. 2002-58; s. 1, ch. 2004-371; s. 33, ch. 2004-373.

775.24 Duty of the court to uphold laws governing sexual predators and sexual offenders.—

(1) The Legislature finds that, for the purpose of approving a plea agreement or for other reasons, certain courts enter orders that effectively limit or nullify requirements imposed upon sexual predators and sexual offenders pursuant to the laws of this state and prevent persons or entities from carrying out the duties imposed, or exercising the authority conferred, by such laws. The laws relating to sexual predators and sexual offenders are substantive law. Furthermore, the Congress of the United States has expressly encouraged every state to enact such laws, and has provided that, to the extent that a state's laws do not meet certain federal requirements, the state will lose significant federal funding provided to the state for law enforcement and public safety programs. Unless a court that enters such an order determines that a person or entity is not operating in accordance with the laws governing sexual predators or sexual offenders, or that such laws or any part of such laws are unconstitutional or unconstitutionally applied, the court unlawfully encroaches on the Legislature's exclusive power to make laws and places at risk significant public interests of the state.

(2) If a person meets the criteria in this chapter for designation as a sexual predator or meets the criteria in s. 943.0435, s. 944.606, s. 944.607, or any other law for classification as a sexual offender, the court may not enter an order, for the purpose of approving a plea agreement or for any other reason, which:

(a) Exempts a person who meets the criteria for designation as a sexual predator or classification as a sexual offender from such designation or classification, or exempts such person from the requirements for registration or community and public notification imposed upon sexual predators and sexual offenders;

(b) Restricts the compiling, reporting, or release of public records information that relates to sexual predators or sexual offenders; or

(c) Prevents any person or entity from performing its duties or operating within its statutorily conferred authority as such duty or authority relates to sexual predators or sexual offenders.

(3) If the court enters an order that affects an agency's performance of a duty imposed under the laws governing sexual predators or sexual offenders, or that

limits the agency's exercise of authority conferred under such laws, the Legislature strongly encourages the affected agency to file a motion in the court that entered such order. The affected agency may, within 1 year after the receipt of any such order, move to modify or set aside the order or, if such order is in the nature of an injunction, move to dissolve the injunction. Grounds for granting any such motion include, but need not be limited to:

- (a) The affected agency was not properly noticed.
- (b) The court is not authorized to enjoin the operation of a statute that has been duly adjudged constitutional and operative unless the statute is illegally applied or unless the statute or the challenged part of it is unconstitutional on adjudicated grounds.
- (c) Jurisdiction may not be conferred by consent of the parties.
- (d) To the extent that the order is based upon actions the agency might take, the court's order is premature and, if and when such actions are taken, these actions may be challenged in appropriate proceedings to determine their enforceability.
- (e) The injunction affects the public interest and would cause injury to the public.
- (f) The order creates an unenforceable, perpetual injunction.
- (g) The order seeks to restrict the agency in the performance of its duties outside the court's territorial jurisdiction.

History.—s. 4, ch. 98-81; s. 2, ch. 2002-58; s. 7, ch. 2004-371.

775.25 Prosecutions for acts or omissions.—A sexual predator or sexual offender who commits any act or omission in violation of s. 775.21, s. 943.0435, s. 944.605, s. 944.606, s. 944.607, or s. 947.177 may be prosecuted for the act or omission in the county in which the act or omission was committed, the county of the last registered address of the sexual predator or sexual offender, or the county in which the conviction occurred for the offense or offenses that meet the criteria for designating a person as a sexual predator or sexual offender. In addition, a sexual predator may be prosecuted for any such act or omission in the county in which he or she was designated a sexual predator.

History.—s. 5, ch. 98-81; s. 8, ch. 2004-371.

Note.—Repealed by s. 7, ch. 2001-124.

775.26 Registration of career offenders and public notification; legislative findings and intent.—The Legislature finds that certain career offenders, by virtue of their histories of offenses, present a threat to the public and to communities. The Legislature finds that requiring these career offenders to register for the purpose of tracking these career offenders and that providing for notifying the public and a community of the presence of a career offender are important aids to law enforcement agencies, the public, and communities if a career offender engages again in criminal conduct. Registration is intended to aid law enforcement agencies in timely apprehending a career offender. Registration is not a punishment, but merely a status. Notification to the public and communities of the presence of a career offender aids the public and communities in avoiding being victimized by a career offender. The Legislature

intends to require the registration of career offenders and to authorize law enforcement agencies to notify the public and communities of the presence of a career offender.

History.—s. 2, ch. 2002-266.

775.261 The Florida Career Offender Registration Act.

Act.—

(1) **SHORT TITLE.**—This section may be cited as "The Florida Career Offender Registration Act."

(2) **DEFINITIONS.**—As used in this section, the term:

(a) "Career offender" means any person who is designated as a habitual violent felony offender, a violent career criminal, or a three-time violent felony offender under s. 775.084 or as a prison releasee reoffender under s. 775.082(9).

(b) "Chief of police" means the chief law enforcement officer of a municipality.

(c) "Community" means any county where the career offender lives or otherwise establishes or maintains a temporary or permanent residence.

(d) "Department" means the Department of Law Enforcement.

(e) "Entering the county" includes being discharged from a correctional facility, jail, or secure treatment facility within the county or being under supervision within the county with a career-offender designation as specified in paragraph (a).

(f) "Permanent residence" means a place where the career offender abides, lodges, or resides for 14 or more consecutive days.

(g) "Temporary residence" means:

1. A place where the career offender abides, lodges, or resides for a period of 14 or more days in the aggregate during any calendar year and which is not the career offender's permanent address;

2. For a career offender whose permanent residence is not in this state, a place where the career offender is employed, practices a vocation, or is enrolled as a student for any period of time in this state or

3. A place where the career offender routinely abides, lodges, or resides for a period of 4 or more consecutive or nonconsecutive days in any month and which is not the career offender's permanent residence, including any out-of-state address.

(3) **CRITERIA FOR REGISTRATION AS A CAREER OFFENDER.**—

(a) A career offender released on or after January 1, 2003, from a sanction imposed in this state for a designation as a habitual violent felony offender, a violent career criminal, or a three-time violent felony offender under s. 775.084 or as a prison releasee reoffender under s. 775.082(9) must register as required under subsection (4) and is subject to community and public notification as provided under subsection (5). For purposes of this section, a sanction imposed in this state includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release or incarceration in a state prison, private correctional facility, or local detention facility, and:

1. The career offender for any felony or other offense necessary for the operation of

2. A conviction of offense necessary to the has not been set aside including.

(b) This section does not have been designated as to register under s. 775.2 as a sexual offender under. However, if a person is not a sexual predator and offender under s. 943.0 must register as a career the person is otherwise offender as provided in

(c) A person subject offender is not subject felon under s. 775.13. longer required to register this section, the person if required to do so under

(d) If a career offender imprisonment, the clerk the career offender's forwarded to the department court renders its finding offender. The fingerprint "Career Offender Registration

(4) **REGISTRATION**

(a) A career offender must register with the department by providing the department, or to the which the career offender permanent or temporary days after establishing residence in this state or v released from the custody Department of Correctional facility

1. Name, social security number, date of birth, height, photograph, address of any current temporary of state, including a routing box, date and place of of each conviction, fingerprint of the crime or criminal offender. A career offender office box in lieu of a permanent career offender's plac trailer, mobile home defined in chapter 32 provide to the department identification number; registration number; an scheme, of the motor manufactured home. If dence is a vessel, live defined in chapter 32 provide to the department identification number; the

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CITY OF MIAMI BEACH

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www.miamibeachfl.gov



COMMISSION MEMORANDUM

To: Mayor David Dermer and
Members of the City Commission

Date: May 18, 2005

From: Jorge M. Gonzalez
City Manager

Handwritten signature of Jorge M. Gonzalez, with the word "for" written below it.

Subject: **REPORT OF THE FINANCE AND CITYWIDE PROJECTS COMMITTEE
MEETING OF APRIL 27, 2005.**

A meeting of the Finance and Citywide Projects Commission Committee (Committee) was held on April 27, 2005 at 3:00 p.m. in the City Manager's Large Conference Room.

NEW BUSINESS:

1. Discussion regarding the City of Miami Beach and Boucher Brothers Miami Beach, LLC (Boucher Brothers) Concession Agreement.

ACTION

The Committee moved the item to the full Commission, recommending approval of the proposed agreement.

Asset Manager Joe Damien introduced and summarized the item. Mr. Damien stated that the Concession Agreement between the City and Boucher Brothers provided that at the end of the first contract year, both parties would meet to review the Concessionaire's performance and to discuss quality, operational, maintenance and other related issues.

Mr. Damien stated that the Administration has met with Boucher Brothers on several occasions in order to discuss contract provisions and address inconsistencies and operational issues that have been identified.

Mr. Damien added that both parties have concluded negotiations and reached consensus on a proposed "Amended and Restated Concession Agreement."

Mr. Damien added that since inception of the original agreement, Boucher Brothers has been responsive to City concerns and inquiries. He also stated that Boucher Brothers has exceeded revenue projections on a yearly basis.

Mr. Michael Milberg, representing the Boucher Brothers, addressed the Committee and stated that he was thrilled with the relationship and dialogue that has developed between the two parties. Mr. Milberg added that the reason the Amended Agreement has taken two years to complete is because both parties have taken a look at and addressed every conceivable scenario.

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Chairman Jose Smith expressed concerns that areas governed by the Concession Agreement at times give the appearance that the surrounding vicinity is a private exclusive beach not open to the general public. Mr. Steven Boucher, partner from the Boucher Brothers, stated that the majority of customers using beach equipment in the concession area are in fact residents of the City of Miami Beach.

Chairman Smith also stated that, in light of recent beach drownings, concession huts should display signs stating that no lifeguards are on duty in order to safeguard against swimmers confusing concession huts with lifeguard stands.

2. Discussion regarding the Miami Beach Marina Submerged Land.

ACTION

The Committee moved the item to the full Commission.

Acting Assistant City Manager Tim Hemstreet introduced and summarized the item. Mr. Hemstreet stated that on February 2, 2005, the Administration presented a Resolution to the City Commission recommending approval of a modification to the Sovereignty Submerged Land Lease. He added that the Commission referred the matter to the Finance and Citywide Projects Committee (Committee) for a more detailed discussion.

Mr. Hemstreet gave a brief history of the Submerged Land Lease, summarizing the following key points for discussion:

- State requested amendment to the existing Lease in order to reflect the actual uses at the Marina;
- Uses included a commercial docking facility with boatlifts and an existing "Cruise to Nowhere" gambling vessel;
- New policy adopted by the State prohibiting any gambling vessel uses at or upon State submerged lands;
- Miami Beach Marina (Marina), the City's subtenant in this Lease agreement, had a pre-existing contractual agreement with respect to the "Cruise to Nowhere" gambling vessel;

Mr. Hemstreet added that the City, Marina, and State have been in discussions in an attempt to best address the State's request and at the same time not impair any pre-existing contractual agreements. He further added that all parties involved have agreed to a modified Sovereignty Submerged Land Lease, which proposes that the one existing gambling vessel will not be held in violation under the State's prohibition against gambling vessels and if this vessel's lease expires, terminates or is canceled, the City further agrees that no other gambling cruise ship may occupy any area within the Submerged Land Lease area.

First Assistant City Attorney Gary Held addressed the Committee and discussed the contractual legal issues pertaining to the Submerged Land Lease.

3. Discussion regarding an Ordinance relating to Watercraft; amending Chapter 66 by enacting a new Section 66-8 regulating the anchoring and mooring of watercraft within the boundaries of the City; regulating anchoring or mooring for Nonnavigational, live-aboard, and other purposes; defining Nonnavigational

purposes and exceptions, and live-aboard; establishing a penalty for violation; providing for repealer of all conflicting Ordinances, Rules and Regulations; providing for Codification and a Severance Clause; and setting an Effective Date.

ACTION

The Committee moved the item to the full Commission, recommending staff incorporate a seven day standard, as oppose to the original three day standard, into the ordinance as a reasonable definition of the time for which a vessel could be considered in or out of navigation.

Assistant City Manager Robert C. Middaugh introduced and summarized the item. Mr. Middaugh stated that at the April 20, 2005 City Commission First Reading of this proposed Ordinance the Administration was provided with direction and expectations regarding enforcement, towing and storage issues, as well as, mooring field provisions.

Mr. Middaugh stated that the Ordinance was prepared as a result of concerns expressed by residents about water pollution, navigational hazards and visual intrusions associated with vessels that anchor or moor for long periods of time in the waters of the City.

Vice-Chairman Richard L. Steinberg raised concerns over the City's liability in enforcing this proposed Ordinance.

Mr. Held addressed some of the legal implications of the proposed Ordinance.

Lieutenant Eduardo Yero and Officer Michael Pryor, of the Miami Beach Police Department, addressed issues regarding police protocol for towing and storage. Officer Pryor stated that the Police Department does not normally arrest individuals on civil charges. Lieutenant Yero also stated that a vessel could be an individual's primary residence and concerns of entering someone's home without a search warrant need further investigation.

City Attorney Murray Dubbin described the legal mechanism for which a lien could be placed on a vessel.

The Committee expressed their concerns with the high costs to enforce the Ordinance.

The Committee also raised questions surrounding expectations for enforcement of the Ordinance and discussed language amendments.

The Committee stated that enforcement could be more flexible than originally anticipated. The Committee indicated that only in required circumstances would towing and storage be necessary rather than in every instance of non-compliance. Vice-Chairman Steinberg pointed out that costs of enforcement are significantly impacted by this expectation and should be reflected in budgeted projections.

Chairman Smith stated that between this meeting and the next Commission meeting, staff should address the concerns raised, particularly methods of enforcement that might minimize program costs.

The Committee also discussed language to better describe the enforcement portion of the Ordinance and more significantly the time limit to be applied to vessels anchoring in City waters. Commissioner Matti H. Bower stated that a seven-day standard, as oppose to the original three-day standard, is a more reasonable definition of the time for which a vessel should be considered in or out of navigation.

JMG/PDW/mim 

T:\AGENDA\2005\May 18, 2005\2005\CONSENT\FCWP 04-27-05 Report

**ATTENDANCE SHEET
MEETING OF THE FINANCE AND CITYWIDE PROJECTS
COMMISSION COMMITTEE**

DATE: - APRIL 27, 2005 TIME: - 2:30 PM

PLEASE STATE YOUR NAME WHEN SPEAKING TO THE COMMITTEE - THANK YOU

PLEASE PRINT NAME	BUSINESS NAME & PHONE
GIL ZRINY	327 JEFF. AVE 305-672-8817
Gary Held	CMB-CAO
MANNY MARQUEZ	CMB-FIN.
Joe DAMIEN	CMB - ASSET
ROBERT REBOSO	CMB - ASSET
Rachel Lef	CMB
STEVEN BOUCHER	BOUCHER BROTHERS ³⁰⁵ 555-8177
BIJAN NAKHJAVAN	MONTY'S MIAMI Beach LLC.
AC WEINSTEIN	SUNPOST
MICHAEL MILNER	Rouché Brothers
GABRIEL RODRIGUEZ & ASIC	CITIZENS.
R. Middaugh	CMB
M. Pryor	MBPD
LT. EDUARDO YERO	MBPD
DOLORES MEJIA	CMB - MAYOR & COMM ext 6834
Margarita Alcon	" " ext. 6437
CARTER McDERMOTT	BILLY SUNDBERG, RR MPMA

ATTENDANCE SHEET

MEETING OF THE FINANCE AND CITYWIDE PROJECTS COMMISSION COMMITTEE

DATE: - APRIL 27, 2005 TIME: - 2:30 PM

PLEASE STATE YOUR NAME WHEN SPEAKING TO THE COMMITTEE - THANK YOU

PLEASE PRINT NAME	BUSINESS NAME & PHONE
Richard Steinberg	CMB 673-7103
JOSE SMITH	CMB 673-7106
MATTI BOWER	CMB COMM.
LUIS GARCIA	" "
PATRICIA WALKER	" FIN.
TIM HENSTREET	" CMO
JORGE M. GONZALEZ	" "
MURRAY DUBBIN	" CAO
RAUL AGUILA	" "
KATHIE BROOKS	" OBPT
JORDANNA RUBIN	PUB. WORKS ENV.
 	

CITY OF MIAMI BEACH

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COMMISSION MEMORANDUM

To: Mayor David Dermer and
Members of the City Commission

Date: May 18, 2005

From: Jorge M. Gonzalez
City Manager

Handwritten signature of Jorge M. Gonzalez.

Subject: **REPORT OF THE GENERAL OBLIGATION BOND OVERSIGHT
COMMITTEE MEETING OF MAY 2, 2005**

The General Obligation Bond Oversight Committee ("Committee") met on May 2, 2005. At the meeting, the Committee considered the following issues.

The Committee reviewed and accepted the minutes from the April 4, 2005 General Obligation Bond Oversight Committee meeting.

CONTINGENCY REPORT

The Administration informed the Committee that 5 change orders on the Fire Station No. 2 project had been approved. A list of the change orders approved to date is attached as "Exhibit A".

DISCUSSION ITEMS

The Committee decided to keep its October 10, 2005 Committee Meeting date as scheduled.

A discussion was held regarding the **Community Meetings** held in April. Specifically, the discussion revolved around the Community Design Review Meeting (CDRM) for the Flamingo/Lummas Neighborhood project. A committee member raised concern that residents may not be fully aware of what improvements were planned for the Drexel Avenue piece of that project and the impact on existing conditions those planned improvements would have. A few community members expressed their agreement with the concern raised. The Administration outlined how the improvements came about. The Drexel Avenue piece of the project was planned to be a connector between Espanola Way and Lincoln Road. During the planning phase, consensus was achieved on the planned improvements, what the A/E Consultant has termed "Las Ramblas". The adopted Basis of Design Report (BODR) included the Las Ramblas improvements. At the CDRM meeting in April, attendees from the Drexel Avenue area in particular were split on whether or not to implement the Las Ramblas design. The main issues that raised concern were traffic and parking impacts. However, the attendees from the overall neighborhood supported the Las Ramblas concept. The Administration has heard the concerns. The planned improvements are in the BODR and the designs are at 60% design. If the community consensus has changed, the Administration needs to know so the design can be addressed accordingly so that the designs don't move forward too far to address it later.

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Date 5-18-05

A sub-committee had been organized to address the role of the Committee with regard to enhanced **Community Outreach**. The sub-committee recommended that additional information be provided to the Committee regarding any elements that affect GO Bond project timetables, including shortfalls. The details and format still have to be developed. The sub-committee also recommended that repetitive information in the Committee's agenda, including the Contingency Report and the Project Status Report, be eliminated. Reports would be on an exception base only, where there are changes in budgets and/or timetables or individual projects that warrant attention by the Committee. The sub-committee also recommended that a quarterly budget status report be developed, which compares actual versus budgeted costs, as well as original and revised budgets. Lastly, the sub-committee recommended that the Administration provide the Committee with an updated scheduling and project sequencing report once a year. These changes will give a broader picture of neighborhood projects, delays (including magnitude and reasons for them), and financial impacts. Ideas on how to implement these changes will be brought back to the Committee before they are finalized.

The Administration presented the Committee with a summary of a proposed process that the Administration is considering adopting in order to remove **private encroachments on public property** that must be addressed in order to construct the Neighborhood Right-of-Way Infrastructure (ROW) Improvement Program. As the City has been planning and designing the ROW projects, the A/E consultants have identified private encroachments on public property. These encroachments need to be addressed before the City can begin construction of the ROW projects. Encroachments have been classified by staff into four types (Encroachment Types (ET) 1, 2, 3 and 4). The ET 1 and 2 encroachments must be removed in order to construct the projects. ET 3 and 4 encroachments do not necessarily impede the construction of the projects, but must also be addressed, as they are encroaching on public property.

These private encroachments typically need to be removed to address several initiatives:

- 1) Construction of Planned Improvements;
- 2) Traffic (Vehicular & Pedestrian) Safety
- 3) Protect Purpose of Swale
 - a. Alleviate/Mitigate Stormwater Flooding (localized)
 - b. Improve Biscayne Bay Water Quality
- 4) Remove Invasive/Non-Native Plantings
- 5) Provide for Consistent Landscaping Throughout Neighborhood

The Administration would initially notify the respective owners so that they may remove the necessary encroachments at their own expense. Additional notifications would be made, but if the private encroachments are not removed by the owner, the City will remove the necessary encroachments in order to implement the projects. The Administration will be holding a City Commission Workshop to further discuss this issue, and determine a process to address the encroachments.

The Committee discussed the impact of addressing these encroachments, both on the residents and the implementation of the construction projects. The main focus of the discussion was on those encroachments, whether permitted or not, that would be the most difficult to remove, such as the encroachments on Drexel Avenue in the Flamingo/Lummus Neighborhood, and the experience in the South Pointe Streetscape Phase I project. These include walls, fences, fountains, and buildings. The concept of the City being the owner of the public ROW, and residents impinging on that ROW, was discussed. The proposed notification and community outreach process was discussed. The Committee will be advised as to when the City Commission Workshop will be held.

PROJECT STATUS REPORT

The Administration informed the Committee that the **Fire Station No. 2** project conflicts between the pilings and the foundation of the existing building have been resolved, and the pilings are almost complete. Underground work will begin after those pilings are complete.

The Committee was told that the site work for the **Fire Station No. 4** project was underway. Drainage, water lines, irrigation are underway. Electrical and stormwater connections are being made. The grade slab will be poured soon. The seawall is almost complete.

With regard to the **Normandy Isle Park and Pool** project, the Administration has received communication from the Surety that they are moving forward with the Invitation to Bid (ITB) for a replacement contractor. The Surety has not yet provided a date for the ITB conclusion. The City is still working with the Surety and will continue to seek all remedies with the Surety to finish the pool project. The park portion of the project is under construction. Site work and grading is being done now. The Administration is still negotiating prices for drainage and other aboveground components with a JOC Contractor.

INFORMATIONAL ITEMS

The updated calendar of community meetings was presented to the Committee, but not reviewed during the meeting.

The Committee was advised of which members represented which of the 13 positions on the Committee, and what new members had joined the Committee.

The Administration presented the Committee with a copy of a memo that went to the April 8, 2005 Finance and Citywide Projects Committee regarding the Capital Improvement Projects and the policies, processes and funding related to the projects.

The Administration presented the Committee with a copy of a City Commission Resolution that awarded EDAW additional services for the Flamingo/Lummus Neighborhood ROW project.

The Committee was advised of a Resolution the City Commission adopted appropriating additional funds for the Normandy Isle Park project to proceed with the construction of the Park.

City Commission Memorandum

May 18, 2005

May 2, 2005 General Obligation Bond Oversight Committee meeting

Page 4 of 4

The Committee was advised of a Resolution the City Commission adopted appropriating additional funds for the Normandy Isle Pool project.

Attachment

JMG/RCM/~~TM~~/JECH/KLM

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**General Obligation Bond Oversight Committee
Contingency Report - May 2005**

Exhibit A

Project	CO #	Date of Approval	Original Contract Amount	Change Order Amount	Revised Contract Amount	Remaining Contingency	% of Project Complete (approx.)	Contract Amount Remaining to be Paid	# of Days	Purpose
Espanola Way	1	1/24/02	\$761,526.70	(\$1,085.00)	\$760,441.70	\$141,558.30	20%			Value Engineering of curb and gutter to valley gutter
Espanola Way	2	1/24/02	\$760,441.70	\$5,300.00	\$765,741.70	\$136,258.30	20%			Paid from funding outside contingency - additional sidewalk, curb and gutter
Espanola Way	3	1/24/02	\$765,741.70	\$81,650.00	\$847,391.70	\$54,608.30	20%			Add revised sanitary sewer improvements (2 manholes, relief line, Ductile Iron Pipe Sleeves) (originally anticipated)
Espanola Way	4	1/24/02	\$847,391.70	(\$27,845.00)	\$819,546.70	\$82,453.30	20%			Value Engineering of base under sidewalk
Espanola Way	5	1/24/02	\$819,546.70	\$8,568.00	\$828,114.70	\$73,885.30	20%			Revised drainage structures to comply with DERM regulations
Espanola Way	6	6/14/02	\$828,114.70	\$900.00	\$829,014.70	\$72,985.30	42%		0	Adjust Storm Drain due to conflict with FPL Duct Bank
Espanola Way	7	6/14/02	\$829,014.70	\$14,988.00	\$844,002.70	\$57,997.30	42%		0	Concrete work to reduce slopes of plaza to approx. 2%
Espanola Way	8	6/14/02	\$844,002.70	\$13,000.00	\$857,002.70	\$44,997.30	42%		+49	Storm drain modifications to adjust plaza slopes to approx. 2%
Espanola Way	9	10/21/02	\$857,002.70	\$799.00	\$857,801.70	\$44,198.30	65%		0	Loading Zone at Barcelona Hotel, requested and funded by Property Owner
Espanola Way	10	10/21/02	\$857,801.70	(\$1,708.90)	\$856,092.80	\$45,907.20	65%		0	Delete 8 Planters (Owner request)
Espanola Way	11	10/21/02	\$856,092.80	\$5,190.00	\$861,282.80	\$40,717.20	65%		21	Underground Phone and TV cables, requested and funded by property owner
Espanola Way	12	10/21/02	\$861,282.80	(\$100.00)	\$861,182.80	\$40,817.20	70%		0	Credit for error on Change Order # 9
Espanola Way	13	10/21/02	\$861,182.80	\$1,180.00	\$862,362.80	\$39,637.20	70%		0	Water line to Proposed fountain
Espanola Way	14	11/12/02	\$862,362.80	\$720.00	\$863,082.80	\$38,917.20	85%		0	Ramp at Tantra for Dumpster
Espanola Way	15	11/12/02	\$863,082.80	\$512.00	\$863,594.80	\$38,405.20	85%		0	Change Planter Layout (Owner Request)
Espanola Way	16	11/12/02	\$863,594.80	\$2,000.00	\$865,594.80	\$36,405.20	85%		5	Change inlet to Storm drains
Espanola Way	17	12/6/02	\$865,594.80	\$500.00	\$866,094.80	\$35,905.20	90%		0	Additional rain water leaders
Espanola Way	18	12/6/02	\$866,094.80	(\$1,584.50)	\$864,510.30	\$37,489.70	90%		0	Net plant material changes by Landscape Architect
Espanola Way	19	01/21/03	\$861,282.80	\$5,760.97	\$867,043.77	\$31,728.73	99%		7	Added Sidewalk, Curb, & Header at edge of pavers
Espanola Way	20	01/21/03	\$867,043.77	\$2,690.00	\$869,733.77	\$29,038.73	99%		2	Install photoelectric cell control for street lights.
Espanola Way	21	01/28/03	\$869,733.77	\$23,547.35	\$893,281.12	\$5,491.38	100%		4	Pay item quantity adjustments and Added drainage.
Espanola Way			\$893,281.12	(\$6,293.50)	\$886,987.62	\$11,784.88			0	Credit from Contractor for quantity adjustments.
Espanola Way				(\$5,190.00)		\$16,974.88				Contribution from Property Owners for C.O.# 11.
Espanola Way				\$16,599.00		\$385.88				Additional services to A/E for additional Construction Administration (time and scope: \$8,447) and DERM Fee Reimbursement (\$8,142)
Fire Station #2	1	12/29/04	\$8,096,576.00	\$22,000.00	\$8,118,576.00	\$394,875.00	0%		30	Storm drainage system in old steel tank area
Fire Station #2	2	12/27/04	\$8,118,576.00	\$4,100.00	\$8,122,676.00	\$390,775.00	0%		0	Rental of 60kw generator for 911 equipment tower
Fire Station #2	3	1/12/05	\$8,122,676.00	\$8,121.64	\$8,130,797.64	\$382,653.36	0%		0	Temporary scaffolding for access to 911 equipment
Fire Station #2	4	1/19/05	\$8,130,797.64	\$58,951.18	\$8,189,748.82	\$323,702.18	0%		0	Construction of temporary parking lot
Fire Station #2	5	2/10/05	\$8,189,748.82	\$5,334.64	\$8,195,083.46	\$318,367.54	5%		0	Connection of generator unit for 911 equipment
Fisher Park	1	8/10/99	\$140,451.04	\$6,874.12	\$147,325.16	\$7,201.39	27%			New scope of work for new layout of tot lot & install new fencing
Flamingo Pool	1	9/25/01	\$2,399,800.00	\$53,500.00	\$2,453,300.00	\$239,980.00				Re-route electrical feed
Flamingo Pool	2	10/24/01	\$2,453,300.00	\$20,170.48	\$2,473,470.48	\$219,809.52	40%			relocate FPL underground line to accommodate new pool

Bolded items reflect Change Orders/Contingency commitments that have occurred since the last General Obligation Bond Oversight Committee meeting.

**General Obligation Bond Oversight Committee
Contingency Report - May 2005**

Project	CO #	Date of Approval	Original Contract Amount	Change Order Amount	Revised Contract Amount	Remaining Contingency	% of Project Complete (approx.)	Contract Amount Remaining to be Paid	# of Days	Purpose
Flamingo Pool	3	10/24/01	\$2,473,470.48	\$62,800.00	\$2,536,270.48	\$157,009.52	40%			Add Alternate # 2 - Sunburst Fence (originally anticipated)
Flamingo Pool	4	10/24/01	\$2,536,270.48	(\$8,680.00)	\$2,527,590.48	\$165,689.52	40%			Delete 3 lifeguard chairs and substitute pool coating
Flamingo Pool	5	2/19/02	\$2,527,590.48	(\$11,246.40)	\$2,516,344.08	\$176,935.92	80%		-10	Credit for using existing portion of sanitary sewer lines
Flamingo Pool	6	2/19/02	\$2,516,344.08	\$37,503.65	\$2,553,847.73	\$139,432.27	80%		+15	Revised storm system layout to include new drainage well. Installation of support haunches at large pool for structural stability.
Flamingo Pool	7	4/2/02	\$2,553,847.73	\$54,000.00	\$2,607,847.73	\$85,432.27			+10	installation of Spray Deck, included as Add Alternate, requested by Parks (originally anticipated)
Flamingo Pool	8	4/8/02	\$2,607,847.73	\$4,264.48	\$2,612,112.21	\$85,432.27			0	installation of interior signage, taken from signage allowance (originally anticipated)
Flamingo Pool	9	4/30/02	\$2,612,112.21	\$17,874.42	\$2,629,986.63	\$67,557.85		\$ -	+24	furnish/install anchors for swim lines, install 5 umbrella anchors, install electrical conduit/wires and panels for night lighting system
Group A & B Parks										
Island View Park - Ph II	1	1/9/02	\$123,453.48	(\$29,330.00)	\$94,123.48	\$62,348.00	20%			Removal of Shade Pavilion from Scope of Services (at City's request)
All Parks	2	1/28/02	\$94,123.48	\$30,060.00	\$124,183.48	\$28,268.18	30%			Removal of concrete slab at Island View tot lot, upgrade to galvanized steel fencing with electrostatic paint
All Parks	3	3/1/02	\$124,183.48	\$8,703.66	\$132,887.14	\$19,564.52	75%			Addition of columns to fencing, relocation of column, addition of 43 linear feet of fencing to accommodate existing tree route systems
All Parks	4	3/1/02	\$132,887.14	\$0.00	\$132,887.14	\$19,564.52	75%		+45	Time extension due to delay of construction start to accommodate ongoing programming at parks
Crespi Park	5	5/15/02	\$132,887.14	\$6,136.00	\$139,023.14	\$13,428.52	90%	\$ -	0	Installation of specially fabricated sections of fencing to avoid conflict with tree root systems
Island View Park	1	8/4/99	\$192,053.48	\$1,775.79	\$193,829.27					Replace underground pipe for electric service to 2 existing lights
Island View Park	2	12/29/99	\$193,829.27	\$4,044.04	\$197,873.31	\$8,703.16	36%	\$ -	0	Removal of Basketball Court & restoration of area
Marseilles Drive	1	5/19/03	\$1,356,913.00	\$18,613.00	\$1,375,526.00	\$117,078.00	35%		8	Change elevation to drainage structures and pipes.
Marseilles Drive	2	5/19/03	\$1,375,526.00	(\$756.00)	\$1,374,770.00	\$117,834.00	35%		0	Credit for use of a less expensive water pipe material.
Marseilles Drive	3	5/19/03	\$1,374,770.00	\$3,957.00	\$1,378,727.00	\$113,877.00	35%		2	Use of a different material and type for all curb and gutter inlet frames and grates.
Marseilles Drive	4	7/24/03	\$1,378,727.00	\$18,240.00	\$1,396,967.00	\$95,637.00	40%		5	Additional 2" layer of asphalt requested by the Public Works Dept.
Marseilles Drive	5	7/24/03	\$1,396,967.00	(\$4,000.00)	\$1,392,967.00	\$99,637.00	40%		0	Credit for reduced drainage well depth.
Marseilles Drive	6	7/24/03	\$1,392,967.00	\$5,056.00	\$1,398,023.00	\$94,581.00	40%		2	Resolution of a conflict with a water main pipe at Rue Versailles.
Marseilles Drive	7	7/24/03	\$1,398,023.00	\$0.00	\$1,398,023.00	\$94,581.00	40%		4	Additional days for document discrepancies.
Marseilles Drive	8	7/24/03	\$1,398,023.00	\$0.00	\$1,398,023.00	\$94,581.00	40%		1	Additional rain delay.
Marseilles Drive	9	7/24/03	\$1,398,023.00	\$0.00	\$1,398,023.00	\$94,581.00	40%		16	Delay due to FDOT lane closure permit.

**General Obligation Bond Oversight Committee
Contingency Report - May 2005**

Project	CO #	Date of Approval	Original Contract Amount	Change Order Amount	Revised Contract Amount	Remaining Contingency	% of Project Complete (approx.)	Contract Amount Remaining to be Paid	# of Days	Purpose
Marseilles Drive	10	8/12/03	\$1,398,023.00	\$17,200.00	\$1,415,223.00	\$77,381.00	55%		6	Re-routing of water main pipe at Normandy and Rue Notre Dame to avoid conflict with existing gas main and storm sewer pipe.
Marseilles Drive	11	8/12/03	\$1,415,223.00	\$3,802.00	\$1,419,025.00	\$73,579.00	55%		2	Replacement of existing sanitary sewer pipe at Bay Drive and Marseille.
Marseilles Drive	12	8/12/03	\$1,419,025.00	\$6,080.00	\$1,425,105.00	\$67,499.00	55%		0	Additional 2" layer of asphalt requested by the Public Works Dept. at Rue Versailles.
Marseilles Drive	13	8/12/03	\$1,425,105.00	\$6,080.00	\$1,431,185.00	\$61,419.00	55%		0	Additional 2" layer of asphalt requested by the Public Works Dept. at Rue Notre Dame.
Marseilles Drive	14	8/12/03	\$1,431,185.00	\$2,622.00	\$1,433,807.00	\$58,797.00	55%		6	Removal of 95 Ft. of existing curb and gutter and replacement with new valley gutter. Removal of existing grate and replacement at different location due to a change in design at an intersection.
Marseilles Drive	15	8/12/03	\$1,433,807.00	\$1,437.00	\$1,435,244.00	\$57,360.00	55%		1	Added traffic control loop at Rue Versailles and Normandy Drive.
Marseilles Drive	16	8/12/03	\$1,435,244.00	\$5,060.00	\$1,440,304.00	\$52,300.00	55%		5	Existing tree removal at Rue Notre dame due to line of sight.
Marseilles Drive	17	8/12/03	\$1,440,304.00	\$4,613.00	\$1,444,917.00	\$47,687.00	55%		2	Additional storm drainage structure.
Marseilles Drive	18	12/19/03	\$1,444,917.00	\$1,320.00	\$1,446,237.00	\$46,367.00	85%		7	Electrical Service for Irrigation Controller.
Marseilles Drive	19	12/19/03	\$1,446,237.00	\$0.00	\$1,446,237.00	\$46,367.00	85%		0	This Change Order was voided because the CMB declined to install additional street light at Cul-De-Sac.
Marseilles Drive	20	12/19/03	\$1,446,237.00	(\$179.00)	\$1,446,058.00	\$46,546.00	85%		0	Credit for replacing 1#5 Re-Bar with a # 3 Re-Bar.
Marseilles Drive	21	12/19/03	\$1,446,058.00	\$11,539.75	\$1,457,597.75	\$35,006.25	85%		10	Re-Construct Rue Versailles to conform revised elevations.
Marseilles Drive	22	12/19/03	\$1,457,597.75	\$21,793.75	\$1,479,391.50	\$13,212.50	85%		38	To install new drainage system along Marseille Drive, Labor and equipment
Marseilles Drive	23	12/19/03	\$1,479,391.50	\$3,474.00	\$1,482,865.50	\$9,738.50	85%		0	To install new drainage system along Marseille Drive, material.
Marseilles Drive	24	12/19/03	\$1,482,865.50	(\$438.00)	\$1,482,427.50	\$10,176.50	85%		0	Credit to the CMB for 2-1/2" water meter of Irrigation system.
Marseilles Drive	25	12/19/03	\$1,482,427.50	\$1,716.00	\$1,484,143.50	\$8,460.50	85%		3	Installation of irrigation main line from STA 7+00 to STA 8+10
Marseilles Drive	26	12/19/03	\$1,484,143.50	\$0.00	\$1,484,143.50	\$8,460.50	85%		2	16" water main tied in, Change Order for 2 additional days only.
Marseilles Drive	27	1/7/04	\$1,484,144.75	(\$11,796.00)	\$1,472,348.40	\$20,256.50	90%		0	Deleted work at Cul-De-Sac of Rue Notre Dame.
Marseilles Drive	28	1/7/04	\$1,472,348.40	(\$5,534.50)	\$1,466,813.90	\$25,791.00	90%		3	Deleted Landscape work at Rue Versailles & N. Drive.
Marseilles Drive	29	1/7/04	\$1,466,813.90	(\$1,055.00)	\$1,465,758.90	\$26,846.00	90%		0	Deleted Landscape work at Rue Notre Dame & N. Drive.
Marseilles Drive	30	1/7/04	\$1,465,758.90	\$400.00	\$1,466,358.90	\$26,446.00	90%		1	Additional Sidewalk at East side of R. Notre Dame & N. Drive.
Marseilles Drive	31	1/7/04	\$1,466,358.90	\$622.00	\$1,466,820.90	\$25,784.00	90%		0	Additional Pictures for August, September & October.
Marseilles Drive	32	1/7/04	\$1,466,820.90	\$495.00	\$1,467,315.90	\$25,289.00	90%		1	To Replace Irrigation Backflow Preventer
Marseilles Drive	33	1/7/04	\$1,467,315.90	\$0.00	\$1,467,315.90	\$25,289.00	90%		12	Additional Time for Landscaping, Marking due to Water Meter
Marseilles Drive	34	1/7/04	\$1,467,315.90	\$550.00	\$1,467,865.90	\$24,739.00	90%		2	Repair Brick Pavers at East & West side of Rue Versailles & N. Drive.
Marseilles Drive	35	1/7/04	\$1,467,865.90	\$0.00	\$1,467,865.90	\$24,739.00	90%		6	Additional Time for the Last Lift of Asphalt along Marseille.
Marseilles Drive	36	1/7/04	\$1,467,865.90	\$3,057.00	\$1,470,922.90	\$21,682.00	95%	\$159,614.97	18	Modification to Service Track plus installation of Electric Meter Can

**General Obligation Bond Oversight Committee
Contingency Report - May 2005**

<u>Project</u>	<u>CO #</u>	<u>Date of Approval</u>	<u>Original Contract Amount</u>	<u>Change Order Amount</u>	<u>Revised Contract Amount</u>	<u>Remaining Contingency</u>	<u>% of Project Complete (approx.)</u>	<u>Contract Amount Remaining to be Paid</u>	<u># of Days</u>	<u>Purpose</u>
Normandy Isle Park and Pool	1	9/10/02	\$2,264,000.00	\$1,708.00	\$2,265,708.00	\$218,004.00	0.05%	\$218,004.00	0	Reimbursement for payment for Removal of FPL facilities from Pool Building
Normandy Isle Park and Pool	2	9/10/02	\$2,265,708.00	\$0.00	\$2,265,708.00	\$218,004.00	0.05%	\$218,004.00	84	Time delay related to waiting for relocation of County and FDOT facilities
Normandy Isle Park and Pool	3	3/10/03	\$2,265,708.00	\$1,078.00	\$2,266,786.00	\$216,926.00	0.05%	\$216,926.00	0	Additional work to dig test pits
Normandy Isle Park and Pool	4	12/10/02	\$2,266,786.00	\$179,000.00	\$2,445,786.00	\$37,926.00	1.00%	\$37,926.00	0	To reinstate the piling foundation system and concrete deck previously removed during value engineering
Normandy Isle Park and Pool	5	10/7/03	\$2,445,786.00	\$0.00	\$2,445,786.00	\$37,926.00	25%	\$37,926.00	102	Approved additional 102 days due to negotiations related with the pool deck.
Normandy Isle Park and Pool	6	12/3/03	\$2,445,786.00	\$15,864.98	\$2,461,650.98	\$37,926.00	35%	\$37,926.00	15	P&R Requested modifications and additions to contract.
Normandy Isle Park and Pool	7	1/14/04	\$2,461,650.98	\$23,488.75	\$2,485,139.73	\$37,926.00	35%	\$37,926.00	0	To install additional floor drains, Demolish & disposal existing Playground, installing P.V.C. for Irrigation, Changes along deck level.
Normandy Isle Park and Pool	8	3/8/04	\$2,485,139.73	\$0.00	\$2,485,139.73	\$37,926.00	47%	\$37,926.00	53	Additional 53 days to Contract time due to expired pool permits plan re-processing.
Normandy Isle Park and Pool	9	3/8/04	\$2,485,139.73	\$12,320.41	\$2,497,460.14	\$25,605.59	47%	\$25,605.59	0	Installation of additional underground primary and secondary electrical conduits and wiring and relocation of FPL electrical transformer.
Normandy Isle Park and Pool	10	4/8/04	\$2,497,460.14	\$12,270.34	\$2,509,730.48	\$13,335.25	47%	\$13,335.25	8	Revisions to structural scope by addition of collector tank and extension of the pool pump room.
Normandy Isle Park and Pool	11	4/22/04	\$2,509,730.48	(\$143,750.00)	\$2,365,980.48	\$157,085.25	47%	\$1,214,304.14	-10	Removal of Scope of Work: perimeter fence, landscaping and irrigation on the park portion of the Project.
North Shore Open Space Park - Phase II	1	10/15/02	\$361,651.00	\$300.00	\$361,951.00	\$40,265.00	25%	\$40,265.00	0	Demolish and dispose two (2) existing vita course stations (not included in original scope)
North Shore Open Space Park - Phase II	2	10/28/02	\$361,951.00	\$1,477.00	\$363,428.00	\$38,788.00	28%	\$38,788.00	0	Installation of 2 4" sleeves at three locations under the newly installed 15' wide pathway
North Shore Open Space Park - Phase II	3	11/14/02	\$363,428.00	\$2,642.71	\$366,070.71	\$36,145.29	30%	\$36,145.29	0	re-grading of the areas of the old guard house and along the existing pathway in order to allow a smoother grade/transition
North Shore Open Space Park - Phase II	4	11/14/02	\$366,070.71	\$199.03	\$366,269.74	\$35,946.26	30%	\$35,946.26	0	Deletion of Asphalt Striping and addition of 1" of asphalt from 79th Street to 81st Street as a means of reinforcing surfacing for anticipated heavy traffic
North Shore Open Space Park - Phase II	5	5/19/03	\$366,269.74	(\$6,770.40)	\$359,499.34	\$42,716.66	100%	\$	0	Credit for 7,440 square feet of defective asphalt.
North Shore Park and Youth Center	1	4/11/02	\$5,659,357.00	\$6,000.00	\$5,665,357.00	\$307,168.00	3%	\$307,168.00		To hire a locator service to locate and identify underground utilities
North Shore Park and Youth Center	2	4/29/02	\$5,665,357.00	\$4,480.00	\$5,669,837.00	\$302,688.00	5%	\$302,688.00		To dispose of sports lighting poles and selected foundations (Park Portion)
North Shore Park and Youth Center	3	4/29/02	\$5,669,837.00	\$12,086.00	\$5,681,923.00	\$290,602.00	5%	\$290,602.00		To provide separate electrical meter services for the Tennis Center as requested by the Parks & Rec. Dept. (Park Portion)

**General Obligation Bond Oversight Committee
Contingency Report - May 2005**

<u>Project</u>	<u>CO #</u>	<u>Date of Approval</u>	<u>Original Contract Amount</u>	<u>Change Order Amount</u>	<u>Revised Contract Amount</u>	<u>Remaining Contingency</u>	<u>% of Project Complete (approx.)</u>	<u>Contract Amount Remaining to be Paid</u>	<u># of Days</u>	<u>Purpose</u>
North Shore Park and Youth Center	4	8/5/02	\$5,681,923.00	\$89,776.00	\$5,771,699.00	\$290,602.00	11%		0	To include value engineered items back in the project: different locker construction, alternate door construction and size, alternate wood gymnasium floors and construction of 2 additional tennis courts (originally anticipated). Funded through GO Bond funds reallocated after addition of CDBG funds.
North Shore Park and Youth Center	5	8/5/02	\$5,771,699.00	\$321,526.00	\$6,093,225.00	\$290,602.00	11%		0	To include sport lighting for the project (originally anticipated). Funded through GO Bond funds reallocated after addition of CDBG funds.
North Shore Park and Youth Center	6	8/9/02	\$6,093,225.00	\$61,965.00	\$6,155,190.00	\$228,637.00	15%		0	To provide 6 storm drain retention tanks to meet DEP requirements.
North Shore Park and Youth Center	7	8/21/02	\$6,155,190.00	\$21,076.00	\$6,176,266.00	\$207,561.00	18%		0	To relocate the and upgrade the existing FPL Transformer
North Shore Park and Youth Center	8	10/24/02	\$6,176,266.00	\$10,939.00	\$6,187,205.00	\$196,622.00	30%		24	Relocation of 5 pigeon plums as requested by DERM and additional exit lights within the Tennis Center as requested by The Building Department
North Shore Park and Youth Center	9	11/13/02	\$6,187,205.00	\$38,872.00	\$6,226,077.00	\$196,622.00	38%		0	Additional 2 clay tennis courts for total of 12 courts. Funding came from North Beach Quality of Life/Resort Tax Fund
North Shore Park and Youth Center	10	1/8/03	\$6,226,077.00	\$1,403.00	\$6,227,480.00	\$195,219.00	50%		108	Cost for stand alone fire alarm system for Tennis Center (\$7,830), credit for changes to main sewer line (-\$2,027.52), and raising top of footing elevation at Youth Center and Gymnasium (-\$4,400)
North Shore Park and Youth Center	11	1/8/03	\$6,227,480.00	\$11,447.00	\$6,238,927.00	\$183,772.00	50%		0	Additional exit signs for Tennis Center (\$1,857) and reconfiguration of storm drainage system (9,590)
North Shore Park and Youth Center	12	1/8/03	\$6,238,927.00	\$28,548.00	\$6,267,475.00	\$155,224.00	50%		0	Additional data services requested by owner, upgrade of window color, and location of a drain at practice tennis court
North Shore Park and Youth Center	13	2/14/03	\$6,267,475.00	\$6,272.00	\$6,273,747.00	\$148,952.00	55%			Additional phone conduit & receptacle (owner request), concrete pad for FPL electric transformer, and structural change to support A/C ducts in Gym north wall
North Shore Park and Youth Center				(\$38,590.00)		\$187,542.00				Funding Added by Parks and Recreation for Change Orders
North Shore Park and Youth Center	14	5/19/03	\$6,273,747.00	\$30,464.00	\$6,304,211.00	\$157,078.00	75%		0	1. Provision of gypsum drywall ceiling for Tennis Center restrooms-\$1,290; 2. Inclusion of Value Eng. Item 16R-\$17,754; 3. Exterior paint color sample -\$237; 4. Removal of trees \$1,881.25; 5. Additional 4" roof drain-\$1,616; 6. Tennis court irrigation line \$3,773; 7. Additional roof insulation-\$1,773.75; 8. Two(2) 2" PVC Duct Bank-\$2,138.60
North Shore Park and Youth Center	15	6/10/03	\$6,304,211.00	\$66,464.00	\$6,370,675.00	\$90,614.00	75%		20	1.Drop ceiling in Tennis Center- \$748; 2. Provision of access ladder to access the roof \$3,333; 3. Construction of 4 dugouts-\$57,502; 4. Installation of additional strobe lights-\$4,881. Additional 20 days was granted for construction of dugouts.

**General Obligation Bond Oversight Committee
Contingency Report - May 2005**

<u>Project</u>	<u>CO #</u>	<u>Date of Approval</u>	<u>Original Contract Amount</u>	<u>Change Order Amount</u>	<u>Revised Contract Amount</u>	<u>Remaining Contingency</u>	<u>% of Project Complete (approx.)</u>	<u>Contract Amount Remaining to be Paid</u>	<u># of Days</u>	<u>Purpose</u>
North Shore Park and Youth Center	16	7/15/03	\$6,370,675.00	\$24,045.00	\$6,394,720.00	\$66,569.00	75%		31	1. Relocation of 2 light poles at the Tennis Center \$12,220 - 2. Addition of 6 area drains on the north side of the Tennis court area to introduce an underground drainage system.
North Shore Park and Youth Center	17	7/15/03	\$6,394,720.00	\$7,750.00	\$6,402,470.00	\$58,819.00	75%		10	1. Sidewalk addition to provide access to the entry ramps south of the building - \$7,075; 2. Addition of sprinkler heads requested by Fire Inspector - \$1,753; 3. Credit for deletion of stucco at Youth Center West wall - (\$1,078). Contract time will be increased 10 days for Phase 3 and 31 days for Phase 2.
North Shore Park and Youth Center	18	8/25/03	\$6,402,470.00	\$6,219.00	\$6,408,689.00	\$52,600.00	85%		0	Four picket gates at North and South Entrances not shown on contract documents.
North Shore Park and Youth Center	19	8/25/03	\$6,408,689.00	\$19,298.00	\$6,427,987.00	\$33,302.00	85%		0	Install two rain water scuppers and additional roofing at West Entrance. Enclosure of ductwork a gymnasium.
North Shore Park and Youth Center				(\$102,750.00)		\$136,052.00				Funding Added by Parks and Recreation for Change Orders
North Shore Park and Youth Center	20	4/23/04	\$6,427,987.00	\$17,541.00	\$6,445,528.00	\$118,511.00	95%		162	Credit for Underground Utility Exploration from CO #1 (- \$5,760.00), Provide a 4" diam. Water meter (\$14,420.00), Additional Fire Alarm devices as required by Fire Inspection (\$3,413.00), Sign for South Entrance (\$991.00), Removal of trees from West baseball field (\$3,210.00). Additional 162 day time extension for Phase I only. Net Current Days are for Phase I: 320, Phase II: 61, and Phase III: 60.
North Shore Park and Youth Center	21	4/23/04	\$6,445,528.00	\$21,065.00	\$6,466,593.00	\$97,446.00	95%	\$ 794,688.00	15	Interior Paint at Stair 2 (\$1,393.87), Temporary Power Reimbursement to GC (\$4,286.39), Additional fire Sprinkler Valve for Elevator Shaft (\$1,013.73), Electrical Service SE Field Water Fountain (\$1,902.01), Street Cuts North Entrance (\$4,701.33), Water Fountain Backflow Valve (\$636.69), Landscape Credit (- \$1,841.00), Single Phase 220V for Elevator (\$1,597.72), Restroom Vanities Counter Supports (\$1,454.48), Water Fountain ADA Compliance (\$1,491.69). Job Site Security during FTAA as requested by City (\$4,428.00).
North Shore Park and Youth Center		5/26/04		(\$120,000.00)		\$217,446.00				City Commission Added \$120,000 in funding for Change Orders

**General Obligation Bond Oversight Committee
Contingency Report - May 2005**

Project	CO #	Date of Approval	Original Contract Amount	Change Order Amount	Revised Contract Amount	Remaining Contingency	% of Project Complete (approx.)	Contract Amount Remaining to be Paid	# of Days	Purpose
North Shore Park and Youth Center	22	7/21/04	\$6,486,593.00	\$127,087.00	\$6,593,680.00	\$90,359.00	98%	\$ 329,684.20	0	Items required due to Building Department inspections required for Final CO and Owner's Punch List: Electrical (\$1,785), Irrigation breaker (\$363), Baseball Field Maintenance Gates (\$1,274), Elevator Room's Electrical and Fire Protection changes (\$29,927), Supervision fees (\$27,360), Performance Bond (\$18,230), Changes to West Plaza (\$14,046), Bracing at Shower Stalls (\$4,176), Additional Roof Scuppers and dampers (\$5,062), Wood thresholds (\$2,347), HVAC Mold Test (\$1,300), Glass railing at Teen's Room (\$9,922), Shuffle Board Permit Processing fee (\$1,598), Various items at Gym, including metal shields, wood nosing, paint, additional fire alarm devices (\$9,697).
North Shore Park and Youth Center	23	10/6/04	\$6,593,680.00	\$11,942.00	\$6,605,622.00	\$78,417.00	98%	\$ 329,684.20	0	Items required due to Building Department inspections required for Final CO and Owner's Punch List: Additional overflow roof scuppers (\$3,580.50), Installation of safe boxes (\$630.00), Additional Gates at North Baseball Field (\$1,239.50), Window Testing at Storefronts (\$1,182.00), and Elect/Mech Changes to Mech. Room 136 (\$5,310.00).
Scott Rakow Youth Center	1	1/16/02	\$2,845,700.00	\$47,300.00	\$2,893,000.00	\$0.00	10%		0	Alternates 1, 2 and 4 for Phasing plan, outdoor rubber flooring and landscaping
Scott Rakow Youth Center	2	N/A	\$0.00	\$0.00	\$0.00	\$0.00	0%		0	VOIDED
Scott Rakow Youth Center	3	2/19/02	\$2,893,000.00	\$0.00	\$2,893,000.00	\$0.00	30%		89	89 day time extension
Scott Rakow Youth Center	4	2/19/02	\$2,893,000.00	(\$36,008.00)	\$2,856,992.00	\$0.00	50%		0	Delete elevator and folding partitions
Scott Rakow Youth Center	5	5/21/02	\$2,856,992.00	\$29,700.00	\$2,886,692.00	\$250,000.00	60%		0	Relocate utilities, additional electrical service to ice rink, reroute Bell South underground service
Scott Rakow Youth Center	6	9/24/02	\$2,886,692.00	\$36,008.00	\$2,922,700.00	\$213,992.00	70%		0	Adding back in the elevator and folding partitions
Scott Rakow Youth Center	7	9/24/02	\$2,922,700.00	\$160,594.77	\$3,083,294.77	\$53,397.23	70%		0	Rerouting storm pipe, additional fire devices and fixtures, repairs to broken water main, remobilization for auger cast piles, paint locker room walls and ceilings, relocation of pedestrian crossing signal, repair of BellSouth lines, repair concrete beams, Zamboni water heater, Water Absorption Tank and monitoring system, rerouting conduit, HVAC unit roof frame, delete basketball court floor replacements work, new foundation for north stairs, modifications to roof and roof structure
Scott Rakow Youth Center	8	11/8/02	\$3,083,294.77	\$9,306.25	\$3,092,601.02	\$4,166.00 *	80%		0	Installation of louvered door at mechanical room

* Specific costs were paid out of project contingency to FPL, Bell South, PSI Geotechnical, Threshold Inspector. These costs were not paid through the contractor and therefore would not be a part of a change order to the Contractor.

Bolded items reflect Change Orders/Contingency commitments that have occurred since the last General Obligation Bond Oversight Committee meeting.

**General Obligation Bond Oversight Committee
Contingency Report - May 2005**

Project	CO #	Date of Approval	Original Contract Amount	Change Order Amount	Revised Contract Amount	Remaining Contingency	% of Project Complete (approx.)	Contract Amount Remaining to be Paid	# of Days	Purpose
Scott Rakow Youth Center	9	1/8/03	\$3,092,601.02	(\$21,016.08)	\$3,071,584.94	\$25,182.08	85%		0	Credit for security guard services and ammonia monitoring system. System will be monitored through Fire Alarm panel.
Scott Rakow Youth Center	10	1/8/03	\$3,071,584.94	\$11,844.81	\$3,083,429.75	\$13,337.27	85%		0	Electrical wiring modifications for existing pool and restrooms; furnish and install new light fixture at entrance; furnish and install new 480v/60amp electrical feeder for new water heater and pump at Zamboni room
Scott Rakow Youth Center	11	2/25/03	\$3,083,429.75	\$2,950.11	\$3,086,379.86	\$110,387.16	85%		0	Work required for fire alarm panel relocation, and addition of strobe and horn for ammonia leak detection device. \$100,000 was added to the project contingency.
Scott Rakow Youth Center	12	4/4/03	\$3,086,379.86	\$10,406.70	\$3,096,786.56	\$99,980.46	85%		0	Relocation of electrical equipment, installation of panic hardware at ice rink entrance doors, and automation of ice rink equipment room fan with ammonia detection panel.
Scott Rakow Youth Center	13	6/30/03	\$3,096,786.56	\$39,860.58	\$3,136,647.14	\$60,119.88	90%		0	Installation of new louver and ductwork to maintain fresh air intake at existing mechanical room, installation of new emergency exit lights, new 42" railing at entry ramp area, additional conduit and wiring to connect ice rink equipment room exhaust fan to fire alarm panel.
Scott Rakow Youth Center	14	8/7/03	\$3,136,647.14	(\$4,500.00)	\$3,132,147.14	\$64,619.88	90%	\$580,162.93	0	Credit for deletion of 4-foot concrete sidewalk along Pine Tree Drive.
Tatum Park	1	2/23/00	\$341,518.36	\$50,987.25	\$392,505.61					new basketball court (originally anticipated)
Tatum Park	2	2/23/00	\$392,505.61	\$33,012.05	\$425,517.66	\$4,477.89	81%			sports and security lighting (originally anticipated)
Tatum Park	3	11/1/01	\$425,517.66	(\$1,800.00)	\$423,717.66	\$6,277.89	100%	\$		Contractor's portion of Safety Surface Installation

CITY OF MIAMI BEACH

CITY HALL 1700 CONVENTION CENTER DRIVE MIAMI BEACH, FLORIDA 33139
www.miamibeachfl.gov



COMMISSION MEMORANDUM

To: Mayor David Dermer and
Members of the City Commission

Date: May 18, 2005

From: Jorge M. Gonzalez
City Manager

Handwritten signature of Jorge M. Gonzalez.

Subject: **REPORT OF THE MAY 9, 2005 - LAND USE AND DEVELOPMENT COMMITTEE MEETING**

A meeting of the Land Use and Development Committee was held on Monday, May 9, 2005 at 4:00 p.m. in the City Manager's Large Conference Room. The following were in attendance: Vice Mayor Luis R. Garcia Jr. and Commissioners Matti Herrera Bower, Saul Gross and Jose Smith.

1. **DISCUSSION REGARDING THE ZONING OF RELIGIOUS INSTITUTIONS IN THE RS-4 DISTRICT.** Referred at the July 28, 2004 City Commission Meeting. Discussed at the September 13, 2004 and January 10, 2005 Land Use and Development Committee Meetings.

Perry Adair and Rob Curtis, representing interested parties, explained their proposed ordinance.

Motion: Study options of two overlay districts that cover the 47th Street and 40th Street areas or a combination of Land Development Regulation changes on 47th Street and overlay on 40th Street. Come back to the Land Use and Development Committee on July 11, 2005. Gross/Bower Vote 4-0

2. **DISCUSSION REGARDING AN ORDINANCE FOR EVALUATION OF OLDER BUILDINGS RECOMMENDED BY THE MAYOR'S BLUE RIBBON PANEL ON STRUCTURAL INTEGRITY OF THE BUILDING.** Referred at the April 20, 2005 City Commission Meeting.

Motion: Send proposed Ordinance to Historic Preservation Board and Planning Board and Design Review Board for their input and review. Gross/Bower Vote 4-0

3. **DISCUSSION REGARDING AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CITY, BY AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," DIVISION 2, "RS-1, RS-2, RS-3, RS-4 SINGLE-FAMILY RESIDENTIAL DISTRICTS," BY CREATING SECTION 142-109, "DEVELOPMENT REGULATIONS FOR SINGLE-FAMILY LOTS ABUTTING A GC GOLF COURSE DISTRICT," PROVIDING FOR LEGAL, NON-CONFORMING STATUS FOR EXISTING STRUCTURES, REAR SETBACKS AND ENCROACHMENTS INTO EASEMENT AREAS; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.**

Fernando Vasquez, City Engineer, Public Works Department, outlined the issue/concern.

Motion: Commissioner Bower, as City Commission liaison, will reach out to property owners after Public Works provides a list of all existing encroachments. Gross/Bower Vote 3-0

JMG/TH/JGG/rar

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Agenda Item CGE
Date 5-18-05

LAND USE AND DEVELOPMENT COMMITTEE

May 9, 2005 at 4:00 p.m.

City Manager's Large Conference Room

Attendance Sheet

	NAME	E-MAIL ADDRESS	CONTACT NUMBERS	FAX NUMBER
1.	Comm. Garcia	@		
2.	Comm Bower	@		
3.	Jorge Gomez	@		
4.	Richard Lorber	@		
5.	Berney Lamasaras	@		
6.	Perry Adair	@ becker-polia.koff.com	305-260-1016	
7.	Gaty Held	@		
8.	JOHN Heffernan	@ miami.beach.fl.gov	6457	
9.	Nahum Y Gross	@ juno.com	305-532-8991	
10.	Rabbi A. Stolper	@ AOL.COM	786-525-5913	
11.	Benjamin Bebelen	@ bebelen@belleair.fl.gov	305-545-6575	
12.	AC WEINSTEIN	@ AC@MIAMI.SUNPOST.COM	6722	
13.	Rachel Lief	@		
14.	Esther Rodriguez	@ miami.beach.fl.gov	6528	7096
15.	ROBERT	@ CURTISPLANNING.COM	305.807.6306	
16.	Hamid Dolikhan	@ miami.beach.fl.gov	(305) 611-7000	
17.		@		
18.		@		
19.		@		
20.		@		

**CITY OF MIAMI BEACH
COMMISSION ITEM SUMMARY**



Condensed Title:

A Resolution Authorizing The Mayor And City Clerk To Execute A First Amendment To The Lease Agreement Between The City UNIDAD Of Miami Beach, Inc., Dated November 8, 2000, For A Portion Of The City-Owned Property Located At 833-6th Street, Miami Beach, Florida

Issue:

Shall the Mayor and City Commission adopt the Resolution approving the First Amendment to Lease with UNIDAD of Miami Beach, Inc?

Item Summary/Recommendation:

UNIDAD of Miami Beach, Inc. (UNIDAD) has been leasing space (468 Sq.Ft.) from the City at the South Shore Community Center since September 1998. On November 8, 2000, the Mayor and City Commission approved a new Lease Agreement for an expanded space (1859+/-sq.ft.) with a term of 10 years (12/1/00-11/30/10) The Agreement contemplated that the City would be rehabilitating the Center, including improvements to UNIDAD's Leased Premises.

In light of the Rehabilitation Project, UNIDAD vacated the Center effective 11/01/01, and the term of the Agreement was stayed during the time they were away from the Center. However, the Project was delayed due to certain unforeseen issues with the original Project architect. The first phase of the Project (as revised) was initiated and completed. UNIDAD re-occupied the Leased Premises on 11/01/04. The Amendment to Lease reflects; 1) the actual as built area being occupied by UNIDAD; 2) the adjusted rent; 3) the modified term, extending same for the period of time (36 months) that UNIDAD was displaced due to the Rehabilitation Project; 4) the holding in abeyance of UNIDAD's obligation to pay Operating Expenses until such time as the renovation of the South Shore Community Center is completed and leases are executed with all other non-City tenants obligating them to pay their pro-rata share of same.

The Administration recommends adopting the Resolution.

Advisory Board Recommendation:

Financial Information:

Source of Funds:		Amount	Account	Approved
<div style="border: 1px solid black; width: 40px; height: 40px; margin: 0 auto;"></div> Finance Dept.	1			
	2			
	3			
	4			
	Total			

City Clerk's Office Legislative Tracking:

Tim Hemstreet/Jose Damien

Sign-Offs:

Department Director	Assistant City Manager	City Manager

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AGENDA ITEM C7A
DATE 5-18-05

CITY OF MIAMI BEACH

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www.miamibeachfl.gov



COMMISSION MEMORANDUM

To: Mayor David Dermer and
Members of the City Commission

Date: May 18, 2005

From: Jorge M. Gonzalez
City Manager

A handwritten signature in cursive script, appearing to read "Jorge".

Subject: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A FIRST AMENDMENT TO THAT CERTAIN LEASE AGREEMENT BY AND BETWEEN THE CITY OF MIAMI BEACH AND UNIDAD OF MIAMI BEACH, INC., DATED NOVEMBER 8, 2000, FOR A PORTION OF THE CITY-OWNED PROPERTY LOCATED AT 833-6TH STREET, MIAMI BEACH, FLORIDA**

ADMINISTRATION RECOMMENDATION

Adopt the Resolution.

BACKGROUND

On September 9, 1998, the Mayor and City Commission adopted Resolution No. 98-22863, approving a Lease Agreement (commencing on September 9, 1998 and expiring on February 8, 1999) by and between the City and UNIDAD of Miami Beach, Inc. (UNIDAD) for the use of approximately 468 Square feet of the City-owned South Shore Community Center, located at 833-6th Street (the Leased Premises). The Leased Premises would serve as administrative office space for UNIDAD's Miami Beach Hispanic Community Center. The lease was extended on a month-to-month basis while a new agreement was negotiated. On June 23, 1999, the Mayor and City Commission adopted Resolution No. 99-23211, approving a Lease Agreement (commencing on July 1, 1999 and expiring on May 31, 2000) between the City and UNIDAD which would also house its "One Stop" job placement program.

UNIDAD subsequently informed the City that it was in a position to upgrade its category as a grants recipient, which would allow them to continue to expand their programs, and they applied for, and were awarded additional grant funding from the Training and Employment Consortium of South Florida and the Department of Labor, which would allow them to continue to provide for counseling, education, and employment training to the City's youth, immigrant, refugee, and senior citizen population. However, UNIDAD's continued grant funding was contingent on its obtaining a long term commitment for the use of its expanded office area in order to ensure it could meet its future programming needs.

On November 8, 2000, the Mayor and City Commission approved a new Lease Agreement, for an expanded space (approximately 1859 square feet), and a term of ten

(10) years, commencing on December 1, 2000, and ending on November 30, 2010. The new Lease Agreement contemplated that the City would be conducting certain improvements (the Rehabilitation Project) to the South Shore Community Center, including improvements to the Leased Premises. Upon completion of the proposed Rehabilitation Project the Leased Premises were to be re-designated, in accordance with the proposed Project plans, which would result in additional square footage for UNIDAD's use.

In light of the pending and proposed Rehabilitation Project, UNIDAD vacated the Leased Premises effective November 1, 2001, and the term of the new Lease Agreement was stayed during the time that UNIDAD would not be occupying the Leased Premises. However, the Project was delayed due to certain previously unforeseen issues with the original Project architect.

The first phase of the Rehabilitation Project was initiated and completed, pursuant to a revised scope of work that was mutually agreed to by the City and UNIDAD. UNIDAD has since re-occupied and been in possession of the respective office space effective November 1, 2004. The Administration and UNIDAD are desirous of amending the Lease Agreement to: 1) reflect the actual as built area being occupied by the Lessee and adjust the applicable rent accordingly; and 2) extend the term of the Lease Agreement by approximately thirty-six (36) months, a term extension approximately equivalent to the period of time that the Lease Agreement was stayed, when Lessee vacated the Leased Premises due to the Rehabilitation Project; 3) hold in abeyance UNIDAD's responsibility to pay its pro-rata share of operating expenses until such time as the renovations to the South Shore Community Center are completed and leases are executed with all other non-City tenants obligating them to pay their pro-rata share of same. As such, the Administration and UNIDAD have negotiated and agreed to the terms and conditions as set forth in the attached First Amendment to Lease Agreement.

The Administration deems that UNIDAD's operations continue to provide a much needed service to our community and that supporting this amendment to lease would be in the City's best interest. As such, it is recommended that the Mayor and City Commission approve the attached First Amendment to Lease, by and between the City and UNIDAD for a portion of the City-owned South Shore Community Center, located at 833-6th Street, Miami Beach, Florida.

JMG:TH:JD:rd
Attachment

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RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A FIRST AMENDMENT TO THAT CERTAIN LEASE AGREEMENT BY AND BETWEEN THE CITY OF MIAMI BEACH AND UNIDAD OF MIAMI BEACH, INC., DATED NOVEMBER 8, 2000, FOR A PORTION OF THE CITY-OWNED SOUTH SHORE COMMUNITY CENTER, LOCATED AT 833-6TH STREET, MIAMI BEACH, FLORIDA

WHEREAS, on September 9, 1998, the Mayor and City Commission adopted Resolution No. 98-22863, approving a Lease Agreement between the City and UNIDAD of Miami Beach, Inc. (UNIDAD) for the use of a portion of the City-owned South Shore Community Center, located at 833-6th Street (the Leased Premises) as an administrative office; and

WHEREAS, on June 23, 1999, the Mayor and City Commission adopted Resolution No. 99-23211, approving a new Lease Agreement between the City and UNIDAD for the continued use of the Leased Premises, as an administrative office; and

WHEREAS, UNIDAD subsequently informed the City that it was in a position to upgrade its category as a grants recipient which would allow it to continue to expand its programs, and it applied for and was awarded additional grant funding from the Training and Employment Consortium of South Florida and the Department of Labor, which would continue to provide for counseling, education, and employment training to the City's youth, immigrant, refugee, and senior citizen population; and

WHEREAS, UNIDAD's continued grant funding was contingent on its obtaining a long term commitment for the use of its expanded office area in order to meet its programming needs; and

WHEREAS, on November 8, 2000, the Mayor and City Commission approved a new Lease Agreement, for an expanded space, which included a ten (10) year term, commencing on December 1, 2000, and ending on November 30, 2010; and

WHEREAS, the new Lease Agreement contemplated that the City would be conducting certain improvements (the Rehabilitation Project) to the South Shore Community Center, including improvements to the Leased Premises; and

WHEREAS, UNIDAD vacated the Leased Premises effective November 1, 2001, in light of the pending and proposed Rehabilitation Project; and

WHEREAS, the term of the new Lease Agreement was stayed during the time that UNIDAD did not occupy the Leased Premises; and

WHEREAS, the new Lease Agreement further provides that upon completion of the proposed Rehabilitation Project, the Leased Premises were to be re-designated; and

WHEREAS, the first phase of the Rehabilitation Project was initiated and completed, pursuant to a revised scope of work that was mutually agreed to by the City and UNIDAD; and

WHEREAS, UNIDAD has re-occupied and been in possession of the respective office space effective November 1, 2004; and

WHEREAS, the City and UNIDAD are desirous of amending the Lease Agreement to: 1) reflect the actual as-built area being occupied by UNIDAD and adjust the applicable rent accordingly; and 2) extend the term of the Lease Agreement by approximately thirty-six (36) months, a term extension approximately equivalent to the period of time that the Lease Agreement was stayed, when UNIDAD vacated the Leased Premises due to the Rehabilitation Project; and

WHEREAS, the City and UNIDAD have negotiated and agreed to the terms and conditions as set forth in the First Amendment to the Lease Agreement; and

WHEREAS, it is recognized that UNIDAD's operations continue to provide a much needed service to our community and that supporting this amendment to lease would be in the City's best interest.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Clerk are hereby authorized to execute the attached First Amendment to that certain Lease Agreement, by and between the City of Miami Beach and UNIDAD of Miami Beach, Inc., dated November 8, 2000, for a portion of the City-owned South Shore Community Center, located at 833-6th Street, Miami Beach, Florida.

ATTEST:

CITY CLERK

MAYOR

JMG:TH:JD:rd

F:\DDHP\\$\ALL\ASSET\6STREET.CTR\UNIDAD FIRST AMENDMENT TO LEASE RES.DOC

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**



City Attorney Date

FIRST AMENDMENT TO LEASE

This First Amendment to the Lease Agreement, dated November 8, 2000, (the "Lease"), is made and entered into this **18th day of May, 2005** by and between the **CITY OF MIAMI BEACH**, a Florida municipal corporation whose principal address is 1700 Convention Center Drive, Miami Beach, Florida, 33139 (hereinafter referred to as "Lessor"), and **UNIDAD OF MIAMI BEACH, INC.**, d/b/a Miami Beach Hispanic Community Center, a Florida not-for-profit corporation whose principal address is 1701 Normandy Drive, Miami Beach, Florida 33141 (hereinafter referred to as "Lessee").

WITNESSETH:

WHEREAS, since September 9, 1998, Lessor has been leasing to Lessee a portion of the City-owned South Shore Community Center, located at 833-6th Street, Miami Beach, Florida, for Lessee's use as administrative office space for its Miami Beach Hispanic Community Center, and its "One Stop" job placement program; and

WHEREAS, on November 8, 2000, the Lessor and Lessee entered into a new Lease Agreement, for an expanded space, which included a ten (10) year term, commencing on December 1, 2000, and ending on November 30, 2010, the Lessee yielding and paying to the Lessor the rental sum of One Dollar (\$1.00) for the Lease term; and

WHEREAS, the new Lease Agreement further provides that the Lessee may occupy approximately 1,859 square feet of administrative office space on the 2nd floor of the South Shore Community Center (the Premises); and

WHEREAS, the Lease Agreement contemplated that the City would be conducting certain improvements (the Rehabilitation Project) to the South Shore Community Center, including improvements to the Premises; and

WHEREAS, the Lease Agreement further provides that upon completion of the proposed Rehabilitation Project, the Premises were to be redesignated as follows:

Approximately 2,209 square feet, on a full time basis (Area A); 1,435 square feet on a part-time basis (Areas B, C, and D); and 2,500 square feet, as may be made available based upon programmed uses approved by the City within the South Shore Community Center (Area E), as more specifically delineated in Exhibit 2 and Exhibit 2-A, attached hereto and incorporated herein, located on the 1st and 2nd floors of the South Shore Community Center, and

WHEREAS, the Lessee vacated the Premises effective November 1, 2001, in light of the pending and proposed Rehabilitation Project; and

WHEREAS, the term of the Lease Agreement was stayed during the time that Lessee did not occupy the leased Premises; and

WHEREAS, the design and scope of the Rehabilitation Project was not undertaken as originally proposed and an alternate design and scope, that reflected a total area of approximately 3,292 square feet, was pursued and constructed; and

WHEREAS, the portion of the Rehabilitation Project where the Lessee will be housed has been substantially completed and the Lessee has re-occupied and has been in possession of the respective office space, effective November 1, 2004; and

WHEREAS, the Lessee and Lessor are desirous of amending the Lease Agreement to: 1) re-define the Premises to reflect the actual as built area being occupied by the Lessee; 2) adjust the applicable rent accordingly; and 3) extend the term by approximately thirty-six (36) months (a term extension approximately equivalent to the period of time that the Lease Agreement was stayed and when Lessee vacated the leased Premises due to the Rehabilitation Project).

NOW THEREFORE, the Lessor and the Lessee, for and in consideration of the mutual covenants, agreements and undertakings herein contained, and in further consideration of the improvements herein mentioned, do by these presents mutually covenant and agree to amend the Lease Agreement as follows:

1. Paragraph Two (on Page 1 of 9 of the Lease Agreement) is amended as follows:

Approximately 1859 square feet of administrative office space, as more specifically delineated in Exhibit 1, attached hereto and incorporated herein, located on the 2nd floor of the two story building known as the South Shore Community Center and located at 833 - 6th Street, Miami Beach, Florida, more particularly described as Lots 6 thru 11, Block 73, Ocean Beach Addition No.3, Plat Book 2, Page 81, Public Records of Miami-Dade County, Florida, which upon completion of the proposed Rehabilitation Project shall be redesignated as follows:

Approximately ~~2209~~ 3,292 square feet, on a full time basis (Areas A, B, and C), ~~485+435~~ square feet on a part-time basis (Areas B,C,D), and 2,500 square feet, as may be made available based upon programmed uses approved by the City within the South Shore Community Center (Area E), as more specifically delineated in Exhibit 2 and Exhibit 2-A, attached hereto and incorporated herein, located on the 1st and 2nd floors of the South Shore Community Center.

2. Paragraph Three (on Page 1 of 9 of the Lease Agreement) is amended as follows:

TO HAVE AND TO HOLD the Premises unto the Lessee, for a term of ten (10) years, beginning on the 1st day of December, 2000, through and including

the ~~31st~~^{30th} day of ~~December~~^{November}, 2013~~10~~, the Lessee yielding and paying to the Lessor the rental sum of One Dollar (\$1.00) for the Lease term, as agreed by the parties hereto, payable upon execution of this Lease Agreement.

3. A Paragraph Four to be added on Page 2 of 9 of the Lease Agreement to read as follows:

Lessee agrees and acknowledges that the Lessor may, at its sole and absolute discretion, opt to contract with a third party, to manage the day-to-day operations at the South Shore Community Center, which may include, but not be limited to, opening (in the morning) and securing (in the afternoon/evening) the main gates and entranceways to the Center, deal with minor Center Tenant issues, and oversee daily maintenance, janitorial services and other similar and related operating matters at the Center.

4. Section 2 on page 3 of 9 of the Lease Agreement is amended as follows:

2. Operating Expenses for Areas "A", "B" and "C" shall include all costs associated with the maintenance and operation of the Premises, including utilities and Common Area Maintenance (CAM). Utilities and CAM shall include, but are not limited to, electricity, water, gas, telephone service and garbage disposal. Annual CAM costs for Fiscal Year 1999-2000 for the South Shore Community Center, and for purposes of this Lease Agreement, have been calculated, as determined by the City's Property Management Division, at approximately \$84,000. Lessee will be occupying approximately ~~1859~~ 3,292 square feet or ~~14.7~~ 26% of the overall leasable space of 12,672 square feet currently available at the South Shore Community Center. For the term of this Lease, Lessor and Lessee agree that the CAM, as defined above, shall be *One Thousand Eight Hundred ~~Twenty Six~~ Eighteen ~~71/100~~ 90/100 Dollars (~~\$1026.90~~) (\$1,818.71)* per month, and shall be due and payable by the Lessee in the manner provided above. CAM costs shall be adjusted accordingly, in the event that the size of the Premises is increased as a result of ~~the Rehabilitation Project, and in accordance with the redesignated space as reflected in Exhibit 2 and Exhibit 2A,~~ the Lessee's use of Areas "D" and/or "E", and in the event that costs associated with maintenance and operation of the South Shore Community Center increase and on a prorated share of any other portion of the facility that is used on a part-time or as available basis.

Notwithstanding the foregoing, it is agreed and understood that Lessee's obligation to pay monthly Operating Expenses, as set forth in Section 2 herein, shall be held in abeyance until such time as the Lessor declares its renovations of the South Shore Community Center complete and executes leases with all other non-City tenants in the Center obligating them to pay their pro-rata share of the Center's Operating Expenses.

5. Section 15 on page 5 of 9 of the Lease Agreement is amended to add a second paragraph to read as follows:

Lessor agrees to install and/or construct and maintain a "monument" sign on the exterior, south side of the Center Property, which shall include the Center's name and Lessee's name, along with other names of the Center's tenants, along with a brief description of the location of each tenant's respective leased areas. Such signage shall be subject to any applicable City Code provisions pertaining to the design and construction of same.

6. Except as otherwise specifically amended herein, all other terms and conditions of the Lease Agreement by and between the Lessor and Lessee shall remain in full force and effect. In the event there is a conflict between the provisions provided herein and the Lease Agreement, the provisions of this First Amendment shall govern.

IN WITNESS WHEREOF, the Lessor and Lessee have hereunto affixed their respective hands and seals at the place, and on the day and date first hereinabove written. Signed, sealed and delivered in the presence of:

Attest:

CITY OF MIAMI BEACH, FLORIDA

City Clerk

Mayor

Attest:

**UNIDAD of Miami Beach, Inc.
a Florida corporation not-for-profit**

Secretary

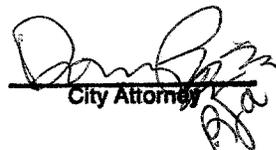
President

(Print Name)

(Print Name)

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**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**



City Attorney



Date

**CITY OF MIAMI BEACH
COMMISSION ITEM SUMMARY**



Condensed Title:

A Resolution Approving A Sublease By And Between Jacques Auger Design Associates, Inc. (the City's Lessee) And Internal Intelligence Service, Inc. (Sublessee) For The Use Of Approximately Six Hundred Twenty-Seven (627) Square Feet Of Office Space, On The 6th Floor Of Historic City Hall, Located At 1130 Washington Avenue, Miami Beach, Florida.

Issue:

Shall the Mayor and City Commission approve the Sublease between Jacques Auger Design Associates and Internal Intelligence Service, Inc?

Item Summary/Recommendation:

Jacques Auger Design Associates occupies 1585 Sq. Ft. of office space on the 6th floor of Historic City Hall pursuant to a City approved Lease dated 01/08/03, with an initial term of 3 years (05/01/03 – 04/30/06). On 03/16/05 Internal Intelligence was awarded a contract to provide the City with unarmed security guard services pursuant to Bid No. 46-03/04. Internal expressed an interest in locating their offices near the City's Police Department, who would be overseeing the security services contract, and the City deems that said proximity to the Police Department would facilitate the contracts oversight. Jacques Auger (who was seeking to sublease a portion of their space) and Internal have agreed to the terms of a sublease which would be permitted under their Lease, subject to the City's approval (which shall not be unreasonably withheld).

The Administration recommends approval of the Sublease.

Advisory Board Recommendation:

--

Financial Information:

Source of Funds:		Amount	Account	Approved
<div style="border: 1px solid black; width: 60px; height: 40px; margin: 0 auto;"></div> Finance Dept.	1			
	2			
	3			
	4			
	Total			

City Clerk's Office Legislative Tracking:

Tim Hemstreet/Jose Damien

Sign-Offs:

Department Director	Assistant City Manager	City Manager

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AGENDA ITEM C7B
DATE 5-18-05

CITY OF MIAMI BEACH

CITY HALL 1700 CONVENTION CENTER DRIVE MIAMI BEACH, FLORIDA 33139
www.miamibeachfl.gov



COMMISSION MEMORANDUM

To: Mayor David Dermer and
Members of the City Commission

Date: May 18, 2005

From: Jorge M. Gonzalez
City Manager

A handwritten signature in black ink, appearing to read 'Jorge M. Gonzalez'.

Subject: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, RETROACTIVELY APPROVING A SUBLEASE BY AND BETWEEN JACQUES AUGER DESIGN ASSOCIATES, INC. (THE CITY'S LESSEE) AND INTERNAL INTELLIGENCE SERVICE, INC. (SUBLESSEE) FOR THE USE OF APPROXIMATELY SIX HUNDRED TWENTY-SEVEN (627) SQUARE FEET OF OFFICE SPACE, ON THE 6TH FLOOR OF HISTORIC CITY HALL, LOCATED AT 1130 WASHINGTON AVENUE, MIAMI BEACH, FLORIDA

ADMINISTRATION RECOMMENDATION

Adopt the Resolution.

ANALYSIS

The Lessee

On April 8, 1993, the Mayor and City Commission adopted Resolution No. 93-20757, approving a Lease Agreement (Lease) between the City of Miami Beach (City) and Auger Design Associates, Inc. (Auger) for approximately 1585 square feet of office space on the 6th floor of Historic City Hall, for a term of five (5) years, commencing May 1, 1993, and ending on April 30, 1998. The Lease also provided Auger, at its discretion, an option to renew the Lease for an additional five (5) year term, which was exercised accordingly (the extended term commenced May 1, 1998 and ended April 30, 2003). Prior to the end of the then existing term, Auger expressed interest in renewing its Lease.

On January 8, 2003, the Mayor and City Commission adopted Resolution No. 2003-25105, approving a new Lease Agreement (current Lease) between the City and Auger for the continued use of the Demised Premises. The initial term of the current Lease is for three (3) years, commencing May 1, 2003, and ending on April 30, 2006.

The Sub-lessee

On March 16, 2005, the Mayor and City Commission approved award of a contract to Internal Intelligence Service, Inc. (Internal), pursuant to Invitation To Bid No. 46-03/04, to provide the City with unarmed security guard services. Internal expressed an interest in locating their offices within close proximity to the Miami Beach Police Department and the City concurred that doing so would be mutually beneficial to both parties since the Police Department would be overseeing and managing the security services contract.

The Sublease Agreement

Auger had previously notified the City of their interest in subleasing a portion of the Demised Premises, which is permitted under the terms of the current Lease. The current Lease provides that subleases, in whole or in part, may be pursued by Auger subject to the City's approval, which shall not be unreasonably withheld.

Auger and Internal have agreed to the terms contained in the attached Commercial Sublease Agreement (Exhibit "A"), for Internal's use of approximately 627 square feet of the 1585 square foot Demised Premises currently occupied by Auger on the 6th floor of Historic City Hall. The term of the sublease is for a one year period (May 1, 2005 through April 30, 2006), and will expire concurrently with the term of Auger's current Lease term. Rent for the sublease is based on a pro-rata basis consistent with the rent currently being paid to the City by Auger. The sublease is also subject to the terms and conditions of the current Lease between the City and Auger.

The Administration has reviewed Auger's request to sublease and determined that it was appropriately submitted. Moreover, the sublease between Auger and Internal would serve to benefit all parties concerned and approval of same is recommended.

JMG:TH:JD:rd
Attachment

F:\DDHP\\$\ALL\ASSET\OLDCITY\AUGER\AUGER Internal Sublease MEM.doc

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, RETROACTIVELY APPROVING A SUBLEASE BY AND BETWEEN JACQUES AUGER DESIGN ASSOCIATES, INC. (THE CITY'S LESSEE) AND INTERNAL INTELLIGENCE SERVICE, INC. (SUBLESSEE) FOR THE USE OF APPROXIMATELY SIX HUNDRED TWENTY-SEVEN (627) SQUARE FEET OF OFFICE SPACE, ON THE 6TH FLOOR OF HISTORIC CITY HALL, LOCATED AT 1130 WASHINGTON AVENUE, MIAMI BEACH, FLORIDA

WHEREAS, on April 8, 1993, the Mayor and City Commission adopted Resolution No. 93-20757, approving a Lease Agreement (Lease) between the City of Miami Beach (City) and Jacques Auger Design Associates, Inc. (JADA) for approximately 1585 square feet of office space on the 6th floor of Historic City Hall, located at 1130 Washington Avenue, Miami Beach, Florida (Demised Premises); and

WHEREAS, the initial term of the Lease was for five (5) years, commencing May 1, 1993, and ending on April 30, 1998, and included an additional five (5) year option to renew at JADA's discretion; and

WHEREAS, in March 1997, the City was notified by JADA of its intent to exercise its option to renew, which commenced May 1, 1998, and ended on April 30, 2003; and

WHEREAS, several months prior to the expiration of the Lease term, JADA expressed interest in maintaining its offices at Historic City Hall, and requested that the City consider renewing its Lease, once again, upon expiration of the existing term; and

WHEREAS, on January 8, 2003, the Mayor and City Commission adopted Resolution No.2003-25105, approving a new Lease Agreement (current Lease) between the City and JADA for the Demised Premises; and

WHEREAS, the initial term of the current Lease is for three (3) years, commencing May 1, 2003, and ending on April 30, 2006; and

WHEREAS, on March 16, 2005, the Mayor and City Commission approved award of a contract to Internal Intelligence Service, Inc. (IISI), pursuant to Invitation To Bid No. 46-03/04, to provide the City with unarmed security guard services; and

WHEREAS, IISI expressed an interest in locating its offices within close proximity to the Miami Beach Police Department and the City concurred that doing so would be mutually beneficial; and

WHEREAS, the Lease allows JADA to sublease, in whole or in part, with the City's approval, which shall not be unreasonably withheld; and

WHEREAS, JADA had previously notified the City of its interest in subleasing a portion of the Demised Premises; and

WHEREAS, the City, JADA and IISI have agreed to the terms contained in the attached Commercial Sublease Agreement (Exhibit "A"), for IISI's use of a portion of the Demised Premises; and

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission herein retroactively approve a sublease by and between Jacques Auger Design Associates, Inc. and Internal Intelligence Service, Inc. for the use of approximately six hundred twenty-seven (627) square feet of office space, on the 6th floor of Historic City Hall, located at 1130 Washington Avenue, Miami Beach, Florida.

PASSED AND ADOPTED THIS 18th day of May, 2005.

Attest:

CITY CLERK

MAYOR

F:\DDHP\\$\ALL\ASSET\OLDCITY\AUGER\AUGER INTERNAL SUBLEASE RES.DOC

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**

City Attorney Date

Exhibit "A"

COMMERCIAL SUBLEASE AGREEMENT

This Sublease Agreement ("Sublease") is entered as of April 8, 2005, 2005 by and between Jacques Auger Design Associates, Inc. ("Sublessor") and Internal Intelligence ("Subtenant"). Sublessor and Subtenant may collectively be referred to as the "Parties."

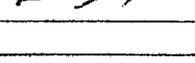
WHEREAS, Sublessor entered into a lease agreement dated May 1, 2003 between the Sublessor and City of Miami Beach ("Landlord") for the premises located at: 1130 Washington Avenue, 6th floor, Miami Beach, Florida 33139 (the "Premises") for a term ending on April 30, 2006 (the "Master Lease Agreement"); and

WHEREAS, Sublessor and Subtenant wish to enter into this Sublease.

NOW, THEREFORE, the Parties agree as follows:

1. **SUBLEASE PREMISES:** Sublessor hereby subleases a portion of the Premises shown/described on Exhibit A attached hereto (the "Sublease Premises").
2. **SUBLEASE TERM:** The Sublease will begin on May 1, 2005 (begin date) and will end on April 30, 2006 (end date) (Sublease Term).
3. **LEASE PAYMENTS:** Subtenant agrees to pay to Sublessor the following:

Rent: As rent, including maintenance & sales tax, for the Sublease Premises the amount of \$1,302.95 each month in advance on the first day of each month at: 1130 Washington Avenue, 6th floor, Miami Beach, Florida 33139. If the Sublease Term does not start on the first day of the month or end on the last day of the month, the Rent will be prorated accordingly.
4. **LATE CHARGES:** If any amount under this Sublease is more than 10 days late, Subtenant agrees to pay a late fee of \$ 150.00. Failure of Subtenant to pay said amount within five (5) days after written notice from Sublessor shall constitute an Event of Default under Master Lease.
5. **INSUFFICIENT FUNDS:** Subtenant agrees to pay the charge of \$ 25.00 for each check that is returned for lack of sufficient funds.
6. **BUSINESS TAXES:** Subtenant shall pay all business taxes in respect of the business carried on in or upon the Sublease Premises.
7. **SECURITY DEPOSIT:** At the signing of this Sublease, Subtenant shall deposit with Sublessor, in trust, a security deposit equal to one month's rent as security for the performance by Subtenant of the terms under this Sublease and for any damages caused by Subtenant, Subtenant's family, agents or visitors to the Sublease Premises during the Sublease Term. However, Sublessor is not just limited to the security deposit amount and Subtenant

Initials	
Sublessor	
Subtenant	

remains liable for any balance. Subtenant shall not apply or deduct any portion of any security deposit from the last or any month's rent. Subtenant shall not use or apply any such security deposit at any time in lieu of payment of rent. If Subtenant breaches any terms or conditions of this Sublease, Subtenant shall forfeit any deposit, as permitted by law.

8. QUIET ENJOYMENT: Subtenant shall be entitled to quiet enjoyment of the Sublease Premises, and neither Sublessor nor Landlord will interfere with that right, as long as Subtenant pays the Base Rent and Other Charges in a timely manner and performs all other obligations under this Sublease.

9. POSSESSION AND SURRENDER OF PREMISES: Subtenant shall be entitled to possession of the Sublease Premises on the first day of the Sublease Term. At the expiration of the Sublease, Subtenant shall peaceably surrender the Sublease Premises to Sublessor or Sublessor's agent in good condition, as it was at the commencement of the Sublease, reasonable wear and tear excepted.

10. CONDITION OF PREMISES: Subtenant or Subtenant's agent has inspected the Sublease Premises, the fixtures, the grounds, building and improvements (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with the requirements of the Americans with Disabilities Act) and acknowledges that the Sublease Premises are in good and acceptable condition and suitable for Subtenant's intended use. If at any time during the term of this Sublease, in Subtenant's opinion, the conditions change, Subtenant shall promptly provide reasonable notice to Sublessor.

11. OBLIGATIONS UNDER MASTER LEASE: Subtenant acknowledges the receipt of a copy of the Master Lease, as attached hereto as Exhibit B.

- A. Subtenant agrees that all terms and conditions of the Master Lease are hereby incorporated into this Sublease except for those provisions of the Master Lease that are directly contradicted by this Sublease, in which event the terms of this Sublease shall control over the Master Lease.
- B. Subtenant will comply with the terms in the Master Lease and will avoid actions or inactions that would constitute a breach or default of Sublessor's obligations in the Master Lease.
- C. If Subtenant desires to do perform any act that requires the consent/approval of Landlord, Subtenant shall also be required to first obtain the consent/approval of Sublessor (Sublessor's right to withhold consent or approval shall be independent of Landlord's right).

12. SEVERABILITY: If any part or parts of this Sublease shall be held unenforceable for any reason, the remainder of this Sublease shall continue in full force and effect. If any provision of this Sublease is deemed invalid or unenforceable by any court of competent jurisdiction, and if limiting such provision would make the provision valid, then such provision shall be deemed to be construed as so limited.

	<i>Initials</i>
Sublessor	<i>[Signature]</i>
Subtenant	<i>[Signature]</i>

13. BINDING EFFECT: The covenants and conditions contained in the Sublease shall apply to and bind the parties and the heirs, legal representatives, successors and permitted assigns of the Parties.

14. ENTIRE AGREEMENT: This Sublease constitutes the entire agreement between the Parties and supersedes any prior understanding or representation of any kind preceding the date of this Sublease. There are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Sublease. This Sublease may be modified in writing and must be signed by both Parties.

15. GOVERNING LAW: This Sublease shall be governed by and construed in accordance with the laws of the State of Florida.

16. NOTICE: Any notice required or otherwise given pursuant to this Sublease shall be in writing and mailed certified return receipt requested, postage prepaid, or delivered by overnight delivery service, if to Subtenant, at the Premises and if to Sublessor, to 1130 Washington Avenue, 6th floor, Miami Beach, Florida 33139. Either party may change such addresses from time to time by providing notice as set forth above.

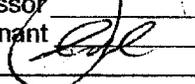
17. WAIVER: The failure of either party to enforce any provisions of this Sublease shall not be deemed a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Sublease. The acceptance of rent by Sublessor or Landlord does not waive Sublessor's right to enforce any provisions of this Sublease.

18. LEGAL FEES: In the event of any legal action by the parties arising out of this Sublease, the losing party shall pay the prevailing party reasonable attorneys' fees and costs in addition to all other relief.

ADDITIONAL PROVISIONS:

Any additional sub-let agreement is subject to Sublessor receiving the option to renew lease from Landlord beyond April 30, 2006.

Subtenant will incur all construction & labor costs for re-configuration of Premises to include separate office space for Subtenant.

	<i>Initials</i>
Sublessor	
Subtenant	

IN WITNESS WHEREOF, the parties have caused this Sublease to be executed the day and year first above written.

SUBLESSOR:

SUBTENANT:

JACOBS INTERIOR DESIGN

Internal Intelligence

Jacobs Inter
(Name)

Donald K. Gregory
(Name)

Principal
(Position)

President / CEO
(Position)

[Signature]

[Signature]

LANDLORD'S CONSENT

If Landlord's consent is not required check here .

The undersigned, Landlord in the Master Lease, hereby consents to the foregoing Sublease Agreement.

LANDLORD:

(Name)

(Position)

Date: _____

OTHER REQUIRED CONSENTS

If no other consents are required check here .

The undersigned, _____, hereby consents to the foregoing Sublease Agreement.

(Name)

Date: _____

Initials	<u>[Signature]</u>
Sublessor	_____
Subtenant	<u>[Signature]</u>

ELEVATOR

KITCHEN
SINK
FRASE

1/4' = 1 SQ. FT.

AVAILABLE SPACE TO SUBLET = 478 SQ. FT.

+ SHARED SPACE =

(298 ÷ 2 = 149 SQ. FT.)

627 TOTAL SUBLET SQ. FT.

TOTAL FLOOR SPACE IS

1585 SQ. FT. (at 40%)

39.5%

EXHIBIT "A"

EXHIBIT "B"

LEASE AGREEMENT

THIS LEASE AGREEMENT, made this 8th day of January, 2003, by and between the **CITY OF MIAMI BEACH**, a Florida municipal corporation, (hereinafter referred to as "City" or "Landlord"), and **JACQUES AUGER DESIGN ASSOCIATES, INC.**, a Florida corporation, (hereinafter referred to as "Tenant").

1. Demised Premises.

Landlord, in consideration of the rentals hereinafter reserved to be paid and of the covenants, conditions and agreements to be kept and performed by the Tenant, hereby leases, lets and demises to the Tenant, and Tenant hereby leases and hires from the Landlord, those certain premises hereinafter referred to as the "Demised Premises", located in the City of Miami Beach, 1130 Washington Avenue, 6th Floor, (a.k.a. Historic City Hall), Miami Beach, Florida 33139, and more fully described as follows:

Sixth floor office space: encompassing one thousand five hundred eighty five square feet (**1,585 sq. ft.**) on the 6th floor (total leasable space). Such space on the 6th floor is specified in "Exhibit A", which is hereby made a part of this Lease Agreement.

2. Term.

- 2.1. The Tenant shall be entitled to have and to hold the Demised Premises for an initial term of **three (3) years**, commencing on the **1st day of May, 2003** (Commencement Date), and ending on the **30th day of April, 2006**.
- 2.2. Landlord, at its sole discretion, may provide Tenant an option to extend the initial term of this Lease Agreement for one additional two-year term. In the event Tenant wishes to request said option, Tenant shall communicate said request, in writing, to Landlord at least 180 days prior to the end of the current Lease term. Landlord's response to said request will be provided to Tenant, in writing, no later than sixty (60) days after receipt of said written request from Tenant.

3. Rent.

3.1 Base Rent: Base Rent for the Demised Premises shall begin to accrue on May 1, 2003 (the Commencement Date), and shall be based upon a total leasable space of 1,585 square feet.

3.1.1 Base Rent for the Demised Premises shall total seventeen thousand one hundred eighteen dollars (**\$17,118.00**) per year, payable in monthly installments of one thousand four hundred twenty six dollars (**\$1,426.00**).

3.1.2 Base Rent shall be due and payable on the first day of each month throughout the term herein.

3.1.3 The Base Rent amount due pursuant to this Section 3 shall be increased annually, on the anniversary of the Commencement Date of the Lease, in increments of three (3%) percent per year, throughout the term of the Lease or any extension thereof. ~~or by the Consumer Price Index (CPI). CPI shall mean that consumer price index established by the Bureau of Labor Statistics of the United States Department of Labor which is entitled Consumer Price Indexes for All Urban Consumers, United States City Average, all items (1967 = 100)" or in the event said index is no longer provided by said Bureau of Labor Statistics, the index furnished by said Bureau or other agency which is most accurately and completely replaces and is the equivalent of the above-referenced index, whichever is greater.~~

~~The Base Period shall be the Index for the calendar month of March prior to the commencement date month of rent in Section 2.1. The Base Period Index shall be compared with the Index for the same calendar month for each subsequent year (comparison month).~~

3.2 Additional Rent: In addition to the monthly Base Rent, as set forth in Section 3.1, Tenant shall also pay to Landlord **Additional Rent** as provided below:

3.2.1 Operating Expenses: For the first lease year, Tenant shall pay Landlord **one thousand four hundred seventy nine dollars and thirty-three cents (\$1,479.33) per month**, towards "Operating Expenses" which are defined as follows:

"Operating Expenses" shall mean the total cost and expenses incurred by Landlord in operating, repairing, and maintaining the Common Facilities (hereinafter defined) actually used, or the Common Facilities (hereinafter defined) available for use by the Tenant and its employees, agents, servants, customers and invitees, excluding only the items included within the Base Rent amount.

Tenant agrees and understands that the costs incurred by the Landlord for Operating Expenses may increase or decrease, and as such the Tenant's pro-rata share of Operating Expenses for the first year of the lease term, as set forth in this Paragraph 3.2.1, may increase or decrease accordingly.

For purposes of this Paragraph 3.2.1, Operating Expenses shall be computed based on "Tenant's Proportionate Share" (see Paragraph 11.3).

"Common Facilities" shall mean all areas, space, equipment and special services, including without limitation and if provided, water service to the building, sewer service to the building, costs

incurred for gardening and/or landscaping, repairing and maintaining elevator(s), painting, janitorial services (except for areas within the Demised Premises), lighting, cleaning, repairing and maintaining sprinkler systems, water pipes, air-conditioning systems, temperature control systems, and security systems, fire alarm repair and maintenance and other equipment in the common areas and the exterior and structural portions of the building, paving and repairing, patching and maintaining the walkways, and cleaning adjacent areas, management fees and the Landlord's employment expenses to employees furnishing and rendering any services to the common areas, together with an additional administration charge equal to fifteen percent (15%) of all other expenses included in the annual common area expenses, provided by the Landlord for the common or joint use and/or benefit of the occupants of **1130 Washington Avenue**, their employees, agents, servants, customers and other invitees.

3.2.2 Property Taxes: The Property Tax Payment shall be payable by Tenant, in accordance with Section 11. The Property Tax Payment for Property Tax Year **2003** is estimated at **zero dollars (\$0.00)**.

3.2.3 Insurance: *See Section 10*

3.2.4 Sub-Lessee Rent: Landlord has herein approved that certain Sublease between Tenant and **LRN, Inc.**, dated **January 1, 2001**, which was previously approved by the Mayor and City Commission as part of Tenant's previous lease agreement, which concurrently expire on April 30, 2003. The Landlord's share of the Sub-Lessee's rent shall be payable by Tenant, in accordance with Section 12.4 and 12.4.1. Sub-Lessee Rent for the sub-leased area shall total two thousand one hundred twenty dollars **(\$2,120.00)** per year, payable in monthly installments of one hundred seventy six dollars and sixty-seven cents **(\$176.67)**, for the first Lease year.

3.3 Sales Tax: Concurrent with the payment of the monthly installment of Base Rent and Additional Rent provided herein, the Tenant shall also include any and all additional sums for all applicable sales and use tax, now or hereafter prescribed by State, Federal or local law, and now described by Florida Statute 212.031, presently at the rate of seven (7%) percent of the rental payments.

4. Location for Payments.

All rents or other payments due hereunder shall be paid to the City of Miami Beach at the following address: City of Miami Beach
Finance Department
c/o Revenue Manager

5. Parking.

5.1 Tenant may request, from the City's Parking Department, the non-exclusive use of up to four (4) parking spaces, ~~if available~~, at Municipal Parking Garage 2-A located at 12th Street and Drexel Avenue. Rates for said spaces are subject to change in accordance with the City's Parking Rate Ordinance, and are currently \$60.00 per month, plus applicable sales and use tax per space.

6. Security Deposit.

6.1 The Landlord acknowledges receipt of Tenant's Security Deposit, in the sum of six thousand dollars (**\$6,000.00**). Said Security Deposit is to ensure the full and faithful performance by the Tenant of each and every term, covenant and condition of this Lease. In the event that Tenant defaults in respect of any of the terms, provisions, covenants and conditions of this Lease, including but not limited to, the payment of any rentals, the Landlord may use, apply or retain the whole or any part of the Security Deposit for the payment of such rentals in default or any other sum which the Landlord may expend or be required to expend by reason of the Tenant's default, including any damages or deficiency in the re-letting of the Demised Premises, whether such damages or deficiency may accrue or after summary proceedings or other re-entry by Landlord.

6.2 In the event that the Tenant shall fully and faithfully comply with all of the terms, provisions, covenants and conditions of this Lease, the Security Deposit or any balance thereof shall be returned to the Tenant, without interest, upon the expiration of the Lease and peaceful surrender of the Demised Premises.

6.3 Landlord shall not be required to keep the Security Deposit in a segregated account and the Security Deposit may be commingled with other funds of Landlord and in no event shall the Tenant be entitled to any interest on the Security Deposit.

6.4 In the event of a bona fide sale of the Property wherein the Demised Premises is located, subject to this Lease, the Landlord shall have the right to transfer the Security Deposit to the vendee for the benefit of the Tenant and the Landlord shall be considered by the Tenant free from all liability for the return of such Security Deposit, and the Tenant agrees to look to the new landlord solely for the return of the Security Deposit, if such Security Deposit is actually transferred, and it is agreed that this shall apply to every transfer or assignment made of the Security Deposit to any new landlord.

6.5 The Security Deposit under this Lease shall not be assigned or encumbered by the Tenant without the prior written consent of the Landlord. It is

expressly understood that the issuance of a warrant and the lawful re-entry to the Demised Premises by the Landlord for any default on the part of the Tenant, prior to the expiration of the term of this Lease, shall not be deemed such termination of this Lease as to entitle the Tenant to recovery of the Security Deposit and the Security Deposit shall be retained and remain the possession of the Landlord.

7. Use and Possession of Demised Premises.

7.1 The Demised Premises shall be used by the Tenant solely as a **full service graphic communications office and any and all activities related to the foregoing**. Said Premises may be open for operation daily ~~a minimum of five (5) days a week~~, with **normal hours of operation being from Monday through Friday 9:00 A.M. to 5:00 P.M.** These days and hours of operation shall not otherwise be modified without the prior written notice to approval of the City Manager, ~~which approval shall not be unreasonably withheld~~. Nothing herein contained shall be construed to authorize hours contrary to the laws governing such operations.

7.2 It is understood and agreed that the Demised Premises shall be used by the Tenant during the term of this Lease only for the above purposes, and for no other purposes or uses whatsoever. Tenant will not make or permit any use of the Demised Premises that, directly or indirectly, is forbidden by public law, ordinance or government regulation, or that may be dangerous to life, limb or property. Tenant may not commit waste on the Demised Premises, use the Demised Premises for any illegal purpose, or commit a nuisance on the Demised Premises. In the event that the Tenant uses the Demised Premises for any purposes not expressly permitted herein, then the Landlord may declare this Lease in default pursuant to Section 18, or without notice to Tenant, restrain such improper use by injunction or other legal action.

8. Improvements.

8.1 Tenant shall, at its own cost and expense, construct or cause to be constructed, all improvements to the Demised Premises reasonably necessary for it to carry on its permitted use(s), as set forth above. The plans for such improvements shall be submitted to the Landlord for the Landlord's prior written consent, which will not be unreasonably withheld or delayed. All permanent (fixed) improvements to the Demised Premises shall remain the property of the Landlord upon termination of the Lease. Upon the lawful termination of the Lease, all personal property and trade fixtures may be removed by the Tenant from the Demised Premises without damage to the Demised Premises. The failure of Tenant to complete the improvements and be granted a Certificate of Occupancy within a reasonable time from the date of execution of this Lease shall be deemed a default by Tenant. Tenant will permit no liens to attach to the Demised Premises arising from, connected with or related to the construction of the improvements. Moreover, such construction shall be accomplished through the use of licensed, reputable

contractors who are acceptable to Landlord. Any and all permits and or licenses required for the installation of improvements shall be the sole responsibility of Tenant.

- 8.2 The above requirements for submission of plans and the use of specific contractors shall not apply to maintenance or repairs which do not exceed \$1,000.00, provided that the work is not structural, and provided that it is permitted by applicable law.

9. Landlord's Right of Entry.

- 9.1 The Landlord, or its authorized agent or agents, shall have the right to enter upon the Demised Premises at all reasonable times for the purpose of inspecting same, preventing waste, making such repairs as the Landlord may consider necessary and for the purpose of preventing fire, theft or vandalism. However, Landlord agrees that whenever possible, Landlord shall provide reasonable notice, in writing, to Tenant, unless the need to enter the Demised Premises is an emergency, as deemed by Landlord at its sole discretion, which if not immediately addressed could cause property damage, loss of life or limb, or other injury to persons. Nothing herein shall imply any duty on the part of the Landlord to do any work that under any provisions of this Lease the Tenant may be required to perform, and the performance thereof by the Landlord shall not constitute a waiver of the Tenant's default.
- 9.2 If the Tenant shall not be personally present to open and permit entry into the Demised Premises at any time, for any reason, and any entry thereon shall be necessary or permissible, the Landlord, or its agents, may enter the Demised Premises by master key, or may forcibly enter the Demised Premises without rendering the Landlord or such agents liable therefore.
- 9.3 Tenant shall furnish Landlord duplicate keys to all locks including exterior and interior doors upon the effective date of this Lease Agreement. Tenant shall not change the locks to the Demised Premises without the prior written consent of Landlord, not to be unreasonably withheld, and in the event such consent is given Tenant shall furnish Landlord duplicate keys to said locks in advance of their installation.

10. Tenant's Insurance.

- 10.1 The Tenant shall, at its sole cost and expense, comply with all insurance requirements of the Landlord. It is agreed by the parties that the Tenant shall not occupy the Demised Premises until proof of the following insurance coverages have been furnished to and approved by the City's Risk Manager:
- 10.1.1 Comprehensive General Liability in the minimum amount of \$1,000,000 per occurrence for bodily injury and property damage. The City of Miami Beach and the Miami Beach Redevelopment Agency must be named as additional insured parties on this

policy.

- 10.1.2 Workers Compensation and Employers Liability coverage in accordance with Florida statutory requirements.
 - 10.1.3 All-Risks property and casualty insurance, written at a minimum of 80% of replacement cost value and with replacement cost endorsement, covering all of Tenant's personal property in the Demised Premises (including, without limitation, inventory, trade fixtures, floor coverings, furniture and other property removable by Tenant under the provisions of the Lease) and all leasehold improvements installed in the Demised Premises by or on behalf of Tenant.
- 10.2 Proof of these coverages must be provided by submitting original certificates of insurance. All policies must provide thirty (30) days written notice of cancellation to both the City's Risk Manager and Asset Manager at 1700 Convention Center Drive, Miami Beach, Florida, 33139. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida and must have a rating of B+:VI or better per A.M. Best's Key Rating Guide, latest edition, and certificates are subject to the approval of the City's Risk Manager.
11. Property Taxes and Assessments. For the purposes of this Section and other provisions of this Lease:
- 11.1 The term "Property Taxes" shall mean (i) the real estate taxes, assessments, and special assessments of any kind which may be imposed upon the tax lot on which the building is constructed (the "Land") and (ii) any expenses incurred by Landlord in obtaining a reduction of any such taxes or assessments.
 - 11.2 The term "Property Tax Year" shall mean the period of twelve (12) calendar months, beginning on January 1st of each year.
 - 11.3 The term "Tenant's Proportionate Share" shall mean the ratio that the square footage of the Demised Premises (**1,585 square feet**) bears to the square footage of the leasable space (**32,238 square feet**) in the entire building.
 - 11.4 Tenant shall pay, as Additional Rent pursuant to Section 3.2.2, for such Property Tax Year an amount ("Property Tax Payment") equal to Tenant's Proportionate Share of the Property Taxes, if any, for such Property Tax Year. If a Property Tax Year ends after the expiration or termination of the term of this Lease, the Property Tax Payment therefore shall be prorated to correspond to that portion of such Property Tax Year occurring within the term of this Lease. The Property Tax Payment shall be payable by Tenant along with the rent on the first day of each month in accordance with the provisions of Section 3.3.2. The monthly Property Tax Payment shall be

equivalent to 1/12th of the estimated yearly taxes, based on the previous year's actual taxes. A copy of the tax bill(s) or other evidence of such taxes issued by the taxing authorities, together with Landlord's computation of the Property Tax Payment, will be made available to Tenant once received from the taxing authorities, if requested by Tenant. Tenant shall pay any difference in the amount between the estimated property taxes and the actual property taxes to Landlord immediately upon receipt of request for said payment from the Landlord.

12. Assignment and Subletting.

- 12.1. Tenant shall not have the right to assign or sublet the Demised Premises, in whole or in part, without the prior written consent of Landlord which shall not be unreasonably withheld. Such written consent is not a matter of right and Landlord is not obligated to give such consent. If granted as provided herein, the making of any assignment or sublease will not release Tenant from any of its obligations under this Lease. A sale or transfer of a majority interest of the stock of Tenant's corporate entity shall be deemed an assignment, and for purposes of this Lease Agreement, the Landlord shall have the right to approve the new majority owner. Said approval shall be provided in writing. A change in majority interest shall not be deemed to occur if ownership interests change among any of the Tenant's current shareholders. However, any such change in majority interest shall be communicated to the Landlord in writing immediately upon said occurrence. Tenant is prohibited from assigning or subletting this Lease to any person or entity which is not of the same or higher financial responsibility as Tenant, as shall be determined by Landlord, in its sole judgment and discretion.
- 12.2 Any consent by the Landlord to any act of assignment shall apply only to the specific transaction thereby authorized. Such consent shall not be construed as a waiver of the duty of the Tenant or the legal representatives or assigns of the Tenant, to obtain from the Landlord consent to any other or subsequent assignment, or as modifying or limiting the rights of the Landlord under the foregoing covenants of the Tenant not to assign without such consent.
- 12.3 Any violation of the provisions of this Lease, whether by act or omissions, by assignee, sub-tenant, or under-tenant or occupant, shall be deemed a violation of such provision by the Tenant, it being the intention and meaning of the parties hereto, that the Tenant shall assume and be liable to the Landlord for any and all acts and omissions of any and all assignees, sub-tenants, or under-tenants or occupants. If the Lease be assigned, the Landlord may and is hereby empowered to collect rent from the assignee; if the Demised Premises or any part thereof be underlet or occupied by any person, other than the Tenant, the Landlord, in the event of the Tenant's default, may, and is hereby empowered to, collect rent from the under-tenant or occupants; in either of such events, the Landlord may apply the net amount received by it for rent herein reserved, and no such collection shall

be deemed a waiver of the covenant herein against assignment or the acceptance of the assignee, under-tenant or occupant as tenant, or a release of the Tenant from the further performance of the covenants herein contained on the part of the Tenant.

- 12.4 Notwithstanding the provisions of this Paragraph 12, Landlord herein approves that certain Sublease between Tenant and **LRN, Inc.**, dated January 1, 2001, which was previously approved by the Mayor and City Commission as part of Tenant's previous lease agreement, which concurrently expire on April 30, 2003. Said Sublease contains a provision to automatically renew, on a month-to-month basis, until terminated by written notice. In the event that this Lease Agreement expires or is otherwise terminated by Landlord, Tenant herein acknowledges that said Sublease shall not survive said expiration or termination of this Agreement and as a result of same shall be null and void and of no further force or effect. A copy of the Sublease between Tenant and **LRN, Inc.** is attached hereto and incorporated herein as "**Exhibit B**".

12.4.1 Tenant shall pay, as Additional Rent pursuant to Section 3.2.4, for each Lease Year an amount ("Sub-Lessee Rent) equal to fifty percent (50%) of the difference between the sum of the amounts due to the Landlord for Tenant's Base Rent (3.1.1), Operating Expenses (3.2.1), and Property Taxes (3.2.2) for that portion of the Demised Premises being sublet (currently 80 square feet) and the amount due to the Tenant by its Sub-Lessee for said sublet area, including any subsequent increases in Sub-Lessee's rent, as may be provided for in any Landlord approved Sublease that may be in effect during the term of this Lease Agreement, or any extensions thereof.

13. Maintenance and Repair.

- 13.1 Tenant shall maintain the Demised Premises and the fixtures and appurtenances therein, and at its sole cost and expense shall make all repairs thereto as and when needed to preserve them in good working order and condition. Landlord shall be responsible for the maintenance of the roof, the exterior of the building, the structural electrical and plumbing (other than plumbing surrounding any sink within the Demised Premises), the common areas and the chilled water supply system, and those items addressed in paragraph entitled "Common Facilities", in Section 3.2.1 herein. Landlord shall maintain and/or repair those items that it is responsible for, so as to keep same in proper working condition. Tenant shall also be responsible for all interior walls and doors ~~the interior and exterior of all windows and doors, as well as immediate replacement of any and all plate glass or other glass in the Demised Premises which may become broken using glass of the same or better quality, at its sole cost and expense.~~

~~Tenant agrees and understands, that if Landlord provides a separate air-conditioning unit for the Demised Premises, Landlord, at its sole discretion,~~

~~Landlord may require that Tenant obtain, at any time during the Term of this Lease Agreement, and continuously maintain in good standing, at Tenant's expense, throughout the Term of the Lease Agreement, a maintenance and repair contract, approved by Landlord, with a service company previously approved in writing by Landlord, providing for the preventative maintenance and repair of all heating/ventilation/air conditioning (HVAC) equipment servicing the Demised Premises. In the event that Landlord notifies Tenant that it will require Tenant to contract for said maintenance and repair services, Tenant shall provide to Landlord, in writing, within ten (10) business days, the name(s) and telephone number(s) of service company(ies) for the Landlord's review and approval. Tenant shall provide a copy of a current, enforceable and fully executed maintenance and repair contract, no later than ten (10) business days after receipt of Landlord's approval of the service company, as proof of Tenant's compliance with this provision.~~

~~If Landlord provides a separate air conditioning unit for the Demised Premises, as provided above, Tenant may request that Landlord inspect same to ensure that it is in proper working order. If the unit is not in proper working order, Landlord shall, at its sole discretion, repair or replace the unit.~~

- 13.2 All damage or injury of any kind to the Demised Premises and to its fixtures, glass, appurtenances, and equipment, if any, or to the building fixtures, glass, appurtenances, and equipment, if any, except damage caused by the wrongful acts or negligence of the Tenant, shall be the obligation of Tenant, and shall be repaired, restored or replaced promptly by Tenant at its sole cost and expense to the satisfaction of Landlord.
- 13.3 All of the aforesaid repairs, restorations and replacements shall be in quality and class equal to the original work or installations and shall be done in good and workmanlike manner.
- 13.4 If Tenant fails to make such repairs or restorations or replacements, the same may be made by the Landlord, at the expense of Tenant, and all sums spent and expenses incurred by Landlord shall be collectable as Additional Rent and shall be paid by Tenant within ten (10) days after rendition of a bill or statement thereof. **IN ALL OTHER RESPECTS, THE DEMISED PREMISES ARE BEING LEASED IN ITS PRESENT "AS IS" CONDITION.**
- 13.5 It shall be Tenant's obligation to insure that any renovations, repairs and/or improvements made by Tenant to the Demised Premises comply with all applicable building codes and life safety codes of governmental authorities having jurisdiction.

14. Governmental Regulations.

The Tenant covenants and agrees to fulfill and comply with all statutes, ordinances, rules, orders, regulations, and requirements of any and all governmental bodies, including but not limited to Federal, State, Miami-Dade County, and City governments, and any and all of their departments and bureaus applicable to the

Demised Premises and shall also comply with and fulfill all rules, orders, and regulations for the prevention of fire, all at Tenant's own cost and expense. The Tenant shall pay all cost, expenses, claims, fines, penalties, and damages that may be imposed because of the failure of the Tenant to comply with this Section, and shall indemnify and hold harmless the Landlord from all liability arising from each non-compliance.

15. Liens.

Tenant will not permit any mechanics, laborers, or materialman's liens to stand against the leased premises or improvements for any labor or materials to Tenant or claimed to have been furnished to Tenant's agents, contractors, or sub-tenants, in connection with work of any character performed or claimed to have performed on said premises, or improvements by or at the direction or sufferance of the Tenant, provided however, Tenant shall have the right to contest the validity or amount of any such lien or claimed lien. In the event of such contest, Tenant shall give the Landlord reasonable security as may be demanded by Landlord to insure payment thereof and prevent sale, foreclosure, or forfeiture of the premises or improvements by reasons of such non-payment. Such security need not exceed one and one half (1-1/2) times the amount of such lien or such claim of lien. Such security shall be posted by Tenant within ten (10) days of written notice from Landlord, or Tenant may "bond off" the lien according to statutory procedures. Tenant will immediately pay any judgment rendered with all proper cost and charges and shall have such lien released or judgment satisfied at Tenant's own expense.

16. Enforcement.

Tenant agrees to pay the Base Rent and any Additional Rent herein reserved at the time and in the manner aforesaid, and should said rents herein provided, at any time remain due and unpaid for a period of fifteen (15) days after the same shall become due, the Landlord may exercise any or all options available to it hereunder, which options may be exercised concurrently or separately or the Landlord may pursue any other remedies enforced by law.

17. Condemnation.

17.1 If at any time during the term of this Lease and any renewal term hereunder, all or any part or portion of the building in which the Demised Premises are located, sufficient in size, to cause the Demised Premises to be untenable, is taken, appropriated, or condemned by reason of Eminent Domain proceedings (except if the Eminent Domain proceedings are initiated by the City of Miami Beach), then this Lease shall be terminated as of the date of such taking, and shall thereafter be completely null and void, and neither of the parties hereto shall thereafter have any rights against the other by reason of this Lease or anything contained therein, except that any rent prepaid beyond the date of such taking shall be prorated to such date, and the Tenant shall pay any and all rents, additional rents, utility charges, or other costs including excess taxes for which it is liable under the terms of this Lease, up to the date of such taking.

17.2 Except as hereunder provided, Tenant shall not be entitled to participate in the proceeds of any award made to the Landlord in any such Eminent Domain proceeding, excepting, however, the Tenant shall have the right to claim and recover from the condemning authority, but not from the Landlord, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any and all damage to Tenant's business by reasons of the condemnation and for or on account of any cost or loss which Tenant might incur in removing Tenant's furniture and fixtures.

18. Default.

18.1 Default by Tenant: At the Landlord's option, any of the following shall constitute an Event of Default under this Lease:

- 18.1.1 The Base Rent, Additional Rent, or any installment thereof is not paid promptly when and where due within fifteen (15) days of due date and if Tenant shall not cure such failure within five (5) days after receipt of written notice from Landlord specifying such default;
- 18.1.2 Any other payment provided for under this Lease is not paid promptly when and where due;
- 18.1.3 The Demised Premises shall be deserted, abandoned, or vacated;
- 18.1.4 The Tenant shall fail to comply with any material term, provision, condition or covenant contained herein other than the payment of rent and shall not cure such failure within thirty (30) days after the receipt of written notice from Landlord specifying any such default; or such longer period of time acceptable to Landlord, at its sole discretion;
- 18.1.5 Receipt of notice of violation from any governmental authority having jurisdiction dealing with a code, regulation, ordinance or the like, which remains uncured for a period of thirty (30) days from its issuance, or such longer period of time acceptable to Landlord, at its sole discretion;
- 18.1.6 Any petition is filed by or against Tenant under any section or chapter of the Bankruptcy Act, as amended, which remains pending for more than sixty (60) days, or any other proceedings now or hereafter authorized by the laws of the United States or of any state for the purpose of discharging or extending the time for payment of debts;
- 18.1.7 Tenant shall become insolvent;
- 18.1.8 Tenant shall make an assignment for benefit of creditors;

18.1.9 A receiver is appointed for Tenant by any court and shall not be dissolved within thirty (30) days thereafter; or

18.1.10 The leasehold interest is levied on under execution.

19. Rights on Default.

19.1 Rights on Default: In the event of any default by Tenant as provided herein, Landlord shall have the option to do any of the following in addition to and not in limitation of any other remedy permitted by law or by this Lease;

19.1.1 Terminate this Lease, in which event Tenant shall immediately surrender the Demised Premises to Landlord, but if Tenant shall fail to do so Landlord may, without further notice, and without prejudice to any other remedy Landlord may have for possession or arrearages in rent or damages for breach of contract, enter upon Demised Premises and expel or remove Tenant and his effects in accordance with law, without being liable for prosecution or any claim for damages therefore, and Tenant agrees to indemnify and hold harmless Landlord for all loss and damage which Landlord may suffer by reasons of such Lease termination, whether through inability to re-let the Demised Premises, or through decrease in rent, or otherwise.

19.1.2 Declare the entire amount of the Base Rent and Additional Rent which would become due and payable during the remainder of the term of this Lease to be due and payable immediately, in which event Tenant agrees to pay the same at once, together with all rents therefore due, at the address of Landlord, as provided in the Notices section of this Lease; provided, however, that such payment shall not constitute a penalty, forfeiture, or liquidated damage, but shall merely constitute payment in advance of the rents for the remainder of said term and such payment shall be considered, construed and taken to be a debt provable in bankruptcy or receivership.

19.1.3 Enter the Demised Premises as the agent of Tenant, by force if necessary, without being liable to prosecution or any claim for damages therefore, remove Tenant's property there from, and re-let the Demised Premises, or portions thereof, for such terms and upon such conditions which Landlord deems, in its sole discretion, desirable, and to receive the rents therefore, and Tenant shall pay Landlord any deficiency that may arise by reason of such re-letting, on demand at any time and from time to time at the office of Landlord; and for the purpose of re-letting, Landlord may (i) make any repairs, changes, alterations or additions in or to said Demised Premises that may be necessary or convenient; (ii) pay

all costs and expenses therefore from rents resulting from re-letting; and (iii) Tenant shall pay Landlord any deficiency as aforesaid.

19.1.4 Take possession of any personal property owned by Tenant on said Demised Premises and sell the same at public or private sale, and apply same to the payment of rent due, holding the Tenant liable for the deficiency, if any.

19.1.5 It is expressly agreed and understood by and between the parties hereto that any installments of rent accruing under the provisions of this Lease which shall not be paid when due shall bear interest at the maximum legal rate of interest per annum then prevailing in Florida from the date when the same was payable by the terms hereof, until the same shall be paid by Tenant. Any failure on Landlord's behalf to enforce this Section shall not constitute a waiver of this provision with respect to future accruals of past due rent. No interest will be charged for payments made within the grace period, such grace period to be defined as within five days of the due date. In addition, there will be a late charge of \$50.00 for any payments submitted after the grace period.

19.1.6 If Tenant shall default in making any payment of monies to any person or for any purpose as may be required hereunder, Landlord may pay such expense but Landlord shall not be obligated to do so. Tenant upon Landlord's paying such expense shall be obligated to forthwith reimburse Landlord for the amount thereof. All sums of money payable by Tenant to Landlord hereunder shall be deemed as rent for use of the Demised Premises and collectable by Landlord from Tenant as rent, and shall be due from Tenant to Landlord on the first day of the month following the payment of the expense by Landlord.

19.1.7 The rights of the Landlord under this Lease shall be cumulative but not restrictive to those given by law and failure on the part of the Landlord to exercise promptly any rights given hereunder shall not operate to waive or to forfeit any of the said rights.

19.2 Default by Landlord: The failure of Landlord to perform any of the covenants, conditions and agreements of the Lease which are to be performed by Landlord and the continuance of such failure for a period of thirty (30) days after notice thereof in writing from Tenant to Landlord (which notice shall specify the respects in which Tenant contends that Landlord failed to perform any such covenant, conditions and agreements) shall constitute a default by Landlord, unless such default is one which cannot be cured within thirty (30) days because of circumstances beyond Landlord's control, and Landlord within such thirty (30) day period shall have commenced and thereafter shall continue diligently to prosecute all actions

necessary to cure such defaults.

However, in the event Landlord fails to perform within the initial 30 day period provided above, and such failure to perform prevents Tenant from operating its business in a customary manner and causes an undue hardship for the Tenant, then such failure to perform (regardless of circumstances beyond its control) as indicated above, shall constitute a default by Landlord.

19.3 Tenant's Rights on Default: If an event of Landlord's default shall occur, Tenant, to the fullest extent permitted by law, shall have the right to pursue any and all remedies available at law or in equity, including the right to sue for and collect damages, including reasonable attorney fees and costs, to terminate this Lease (and all of its obligations hereunder by giving notice of such election to Landlord, whereupon this Lease shall terminate as of the date of such notice), to specifically enforce Tenant's rights; and/or to enjoin Landlord.

20. Indemnity Against Costs and Charges.

20.1 The Tenant shall be liable to the Landlord for all costs and charges, expenses, reasonable attorney's fees, and damages which may be incurred or sustained by the Landlord, by reason of the Tenant's breach of any of the provisions of this Lease. Any sums due the Landlord under the provisions of this item shall constitute a lien against the interest of the Tenant and the Demised Premises and all of Tenant's property situated thereon to the same extent and on the same conditions as delinquent rent would constitute a lien on said premises and property.

20.2 If Tenant shall at any time be in default hereunder, and if Landlord shall deem it necessary to engage an attorney to enforce Landlord's rights and Tenant's obligations hereunder, the Tenant will reimburse the Landlord for the reasonable expenses incurred thereby, including, but not limited to, court costs and reasonable attorney's fees, whether suit be brought or not and if suit be brought, then Tenant shall be liable for expenses incurred at both the trial and appellate levels.

21. Indemnification Against Claims.

21.1 The Tenant shall indemnify and save the Landlord harmless from and against any and all claims or causes of action (whether groundless or otherwise) by or on behalf of any person, firm, or corporation, for personal injury or property damage occurring upon the Demised Premises or upon any parking lot or other facility or appurtenance used in connection with the Demised Premises, occasioned in whole or in part by any of the following:

21.1.1 An act or omission on the part of the Tenants, or any employee, agent, invitee, or guest, assignee or sub-tenant of the Tenant;

- 21.1.2 Any misuse, neglect, or unlawful use of the Demised Premises or the building in which the Demised Premises is located or any of its facilities by Tenant, or any employee, agent, invitee, or guest, assignee or sub-tenant or the Tenant, but not to include trespassers upon the Demised Premises;
 - 21.1.3 Any breach, violation, or non-performance of any undertaking of the Tenant under this Lease;
 - 21.1.4 Anything growing out of the use or occupancy of the Demised Premises by the Tenant or anyone holding or claiming to hold through or under the Lease.
- 21.2 Tenant agrees to pay all damages to the Demised Premises or other facilities used in connection therewith, caused by the Tenant or any employee, guest, or invitee of the Tenant.

22. Signs and Advertising.

Without the prior written consent of Landlord, Tenant shall not permit the painting and display of any signs, plaques, lettering or advertising material of any kind on or near the Demised Premises. All additional signage shall comply with signage standards established by Landlord and comply with all applicable building codes, and any other Municipal, County, State and Federal laws.

23. Effect of Conveyance.

The term "Landlord" as used in the Lease means only the owner for the time being of the land and building containing the Demised Premises, so that in the event of any sale of said land and building, or in the event of a lease of said building, the Landlord shall be and hereby is entirely freed and relieved of all covenants and obligations of the Landlord hereunder, and it shall be deemed and construed without further agreement between the parties, or between the parties and the purchaser at such sale, or the lease of this building, that the purchaser or Tenant has assumed and agreed to carry out all covenants and obligations of the Landlord hereunder.

24. Damage to the Demised Premises.

24.1 The building in which the Demised Premises are located is insured under Landlord's fire insurance policy. If the Demised Premises shall be damaged by the elements or other casualty not due to Tenant's negligence, or by fire, but are not thereby rendered untenable, as determined by Landlord, in whole or in part, and such damage is covered by Landlord's insurance, if any, (hereinafter referred to as "such occurrence"), Landlord, shall, as soon as possible after such occurrence, utilize the insurance proceeds to cause such damage to be repaired and the rent shall not be abated. If by reason of such occurrence, the Demised Premises shall be rendered untenable, as determined by Landlord, only in part, Landlord shall as soon as possible utilize the insurance proceeds to cause the damage to be repaired, and the

rent meanwhile shall be abated proportionately as to the portion of the Demised Premises rendered untenable; provided however, if the Demised Premises are by reason of such occurrence, rendered more than 50% but less than 100% untenable, as determined by Landlord, Landlord shall promptly obtain a good faith estimate of the time required to render the Demised Premises tenantable. **If such time exceeds sixty (60) days, the Tenant shall have the option of canceling this Lease, which option shall be exercised by Tenant in writing within ten (10) days of receipt of notice of same from Landlord.**

- 24.1 If the Demised Premises shall be rendered wholly untenable by reason of such occurrence, the Landlord shall utilize the insurance proceeds to cause such damage to be repaired and the rent meanwhile shall be abated in whole; provided, however, that Landlord shall have the right, to be exercised by notice in writing delivered to Tenant within sixty (60) days from and after said occurrence, to elect not to reconstruct the destroyed Demised Premises, and in such event, this lease and the tenancy hereby created shall cease as of the date of said occurrence, the rent to be adjusted as of such date. If the Demised Premises shall be rendered wholly untenable, the Tenant shall have the right, to be exercised by notice in writing, delivered to Landlord within thirty (30) days from and after said occurrence, to elect to terminate this lease, the rent to be adjusted accordingly. Notwithstanding any clause contained in this Section, if Landlord becomes self insured or the damage is not covered by Landlord's insurance, then Landlord shall have no obligation to repair the damage, but Landlord shall advise Tenant in writing within thirty (30) days of the occurrence giving rise to the damage and of its decision not to repair, and the Tenant may, at any time thereafter, elect to terminate the lease, and the rent shall be adjusted accordingly.

25. Quiet Enjoyment.

The Tenant shall enjoy quiet enjoyment of the Demised Premises and shall not be evicted or disturbed in possession of the Demised Premises so long as Tenant complies with the terms of this Lease.

26. Waiver.

26.1 It is mutually covenanted and agreed by and between the parties hereto that the failure of Landlord to insist upon the strict performance of any of the conditions, covenants, terms or provisions of this Lease, or to exercise any option herein conferred, will not be considered or construed as a waiver or relinquishment for the future of any such conditions, covenants, terms, provisions or options but the same shall continue and remain in full force and effect.

26.2 A waiver of any term expressed herein shall not be implied by any neglect of Landlord to declare a forfeiture on account of the violation of such term if such violation by continued or repeated subsequently and any express waiver shall not affect any term other than the one specified in such waiver

and that one only for the time and in the manner specifically stated.

26.3 The receipt of any sum paid by Tenant to Landlord after breach of any condition, covenant, term or provision herein contained shall not be deemed a waiver of such breach, but shall be taken, considered and construed as payment for use and occupation, and not as rent, unless such breach be expressly waived in writing by Landlord.

27. Notices.

The addresses for all notices required under this Lease shall be as follows, or at such other address as either party shall be in writing, notify the other:

LANDLORD: City Manager
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139

With copies to: City Attorney
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139

And: Asset Manager
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139

TENANT: Jacques Auger Design Associates, Inc.
1130 Washington Avenue, 6th Floor
Miami Beach, Florida 33139

All notices shall be hand delivered and a receipt requested, or by certified mail with return receipt requested, and shall be effective upon receipt.

28. Entire and Binding Agreement.

This Lease contains all of the agreements between the parties hereto, and it may not be modified in any manner other than by agreement in writing signed by all the parties hereto or their successors in interest. The terms, covenants and conditions contained herein shall inure to the benefit of and be binding upon Landlord and Tenant and their respective successors and assigns, except as may be otherwise expressly provided in this Lease.

29. Provisions Severable.

If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

30. Captions.

The captions contained herein are for the convenience and reference only and shall not be deemed a part of this Lease or construed as in any manner limiting or amplifying the terms and provisions of this Lease to which they relate.

31. Number and Gender.

Whenever used herein, the singular number shall include the plural and the plural shall include the singular, and the use of one gender shall include all genders

32. Governing Law.

This Lease shall be governed by and construed in accordance with the law of the State of Florida.

33. Limitation of Liability.

The Landlord desires to enter into this Agreement only if in so doing the Landlord can place a limit on Landlord's liability for any cause of action for money damages due to an alleged breach by the Landlord of this Agreement, so that its liability for any such breach never exceeds the sum of Ten Thousand Dollars and no/100 (\$10,000.00). Tenant hereby expresses its willingness to enter into this Agreement with the Tenant's recovery from the Landlord for any damage action for breach of contract to be limited to a maximum amount of Ten Thousand (\$10,000.00) Dollars. Accordingly, and notwithstanding any other term or condition of this Agreement, Tenant hereby agrees that the Landlord shall not be liable to Tenant for damage in an amount in excess of Ten Thousand (\$10,000.00) Dollars for any action or claim for breach of contract arising out of the performance or non-performance of any obligations imposed upon the Landlord by this Agreement. Nothing contained in this Section or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon Landlord's liability as set forth in Florida Statutes, Section 768.28.

34. Surrender of the Demised Premises.

The Tenant shall, on or before the last day of the term herein demised, or the sooner termination thereof, peaceably and quietly leave, surrender and yield upon to the Landlord the Demised Premises, together with any and all equipment, fixtures, furnishings, appliances or other personal property, if any, located at or on the Demised Premises and used by Tenant in the maintenance, management or operation of the Demised Premises, excluding any trade fixtures or personal property, if any, which can be removed without material injury to the Demised Premises, free of all liens, claims and encumbrances and rights of others or broom-clean, together with all structural changes, alterations, additions, and improvements which may have been made upon the Demised Premises, in good order, condition and repair, reasonable wear and tear excepted, subject, however, to the subsequent provisions of this Article. Any property which pursuant to the provisions of this Section is removable by Tenant on or at the Demised Premises upon the termination of this Lease and is not so removed may, at the option of the Landlord, be deemed abandoned by the Tenant, and either may be retained by the Landlord as its property or may be removed and disposed of at the sole cost of the Tenant in such manner as the Landlord may see fit. If the Demised Premises and personal

property, if any, be not surrendered at the end of the term as provided in this Section, the Tenant shall make good the Landlord all damages which the Landlord shall suffer by reason thereof, and shall indemnify and hold harmless the Landlord against all claims made by any succeeding tenant or purchaser, so far as such delay is occasioned by the failure of the Tenant to surrender the Demised Premises as and when herein required.

35. Time is of the Essence.

Time is of the essence in every particular and particularly where the obligation to pay money is involved.

36. Venue.

This Lease Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any and all the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida.

LANDLORD AND TENANT HEREBY KNOWINGLY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING THAT THE LANDLORD AND TENANT MAY HEREIN AFTER INSTITUTE AGAINST EACH OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATED TO THIS LEASE AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed by the respective duly authorized officers, and the respective corporate seals to be affixed this 8th day of JANUARY, 2003.

ATTEST:

Robert Parker
CITY CLERK

LANDLORD /
CITY OF MIAMI BEACH, FLORIDA

BY: [Signature]
MAYOR

ATTEST:

[Signature]
~~SECRETARY~~
WITNESS

TENANT /
JACQUES AUGER DESIGN
ASSOCIATES, INC.

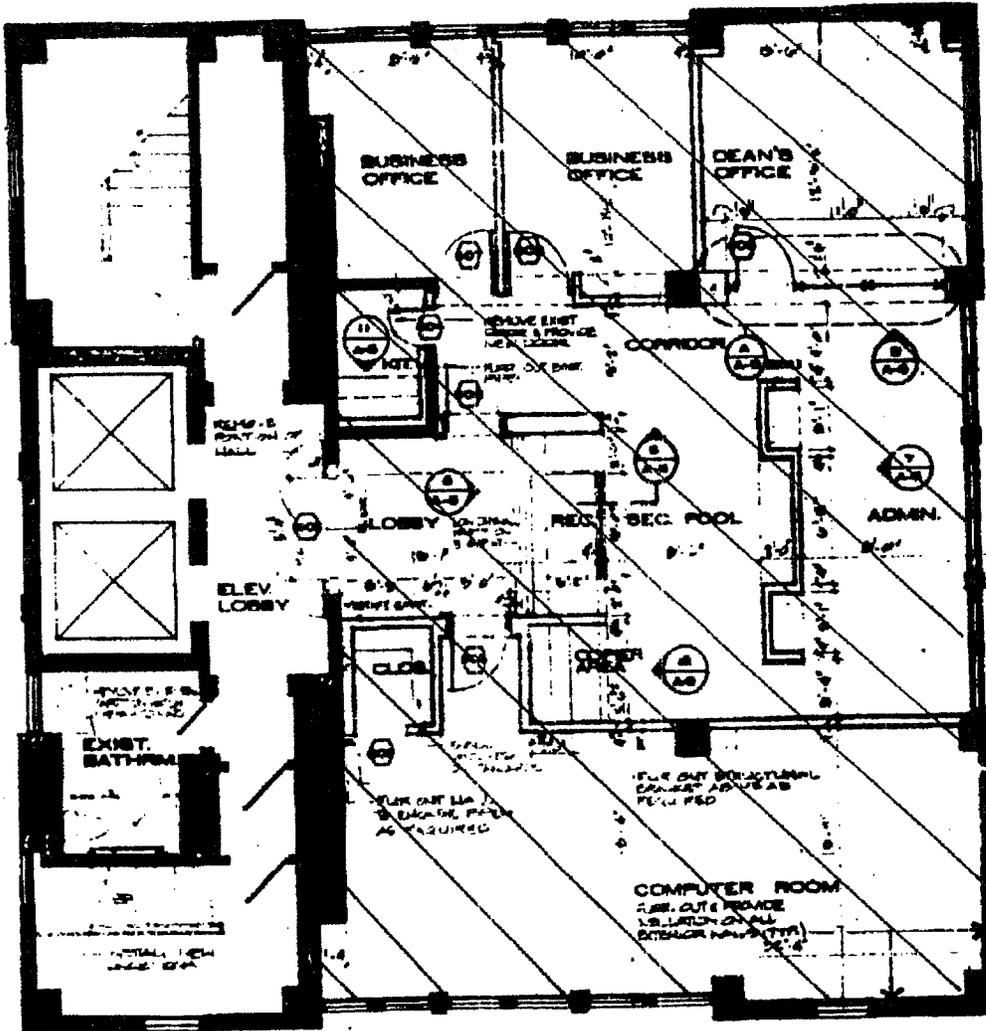
BY: [Signature]
PRESIDENT
JACQUES AUGER
(Print Name)

CORPORATE SEAL
(affix here)

F:\DDHP\ALL\ASSET\OLD\CITY\AUGER\Auger.Lease.doc

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**

[Signature] 12-23-02
City Attorney Date



SIXTH FLOOR PLAN
 SCALE 1/8"=1'-0"

Exhibit "A"

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**CITY OF MIAMI BEACH
COMMISSION ITEM SUMMARY**



Condensed Title:

A Resolution Authorizing The Mayor And City Clerk, To Execute An Amended And Restated Concession Agreement Between The City And Boucher Brothers Miami Beach, LLC For Management And Operation Of Beachfront Concessions On The Beaches Seaward Of Lummus Park, Ocean Terrace And North Shore Open Space Park, Miami Beach, Florida.

Issue:

Should the Amended and Restated Concession Agreement be approved?

Item Summary/Recommendation:

In October 2001, Boucher Brothers Miami Beach, LLC (Boucher Brothers) was awarded the concession agreement to manage and operate the beachfront concessions seaward of certain City parks. The initial term is for 5 years (11/5/01-11/4/06), and has one 5 year option, subject to conclusion of good faith negotiations and mutually agreed upon terms and conditions.

The Agreement provided that at the end of the first contract year, the City and Boucher Brothers would meet to review Concessionaire's performance for said contract year to discuss quality, operational, maintenance and any other related issues. The City and Boucher Brothers met on several occasions to discuss certain contract provisions that should be revisited in order to address inconsistencies and operational issues that have been identified, including certain matters which should be memorialized which were not included in the original contract. The Administration continued to meet with Boucher Brothers in order to clarify the terms and conditions related to the aforementioned provisions, as well as addressing other matters which have subsequently occurred which have impacted their beachfront operations. Negotiations have been concluded with regard to all issues which have been incorporated in the attached Amended and Restated Concession Agreement, the most relevant of which are summarized in the attached Commission memo.

The Administration recommends that the Mayor and City Commission adopt the Resolution.

Advisory Board Recommendation:

On April 27, 2005, approval was recommended by the Finance and Citywide Projects Committee.

Financial Information:

Source of Funds:		Amount	Account	Approved
<div style="border: 1px solid black; width: 50px; height: 50px; display: inline-block;"></div> Finance Dept.	1			
	2			
	3			
	4			
	Total			

City Clerk's Office Legislative Tracking:

Jose Damien/Tim Hemstreet

Sign-Offs:

Department Director	Assistant City Manager	City Manager

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AGENDA ITEM C7C
DATE 5-18-05

CITY OF MIAMI BEACH

CITY HALL 1700 CONVENTION CENTER DRIVE MIAMI BEACH, FLORIDA 33139
www.miamibeachfl.gov



COMMISSION MEMORANDUM

To: Mayor David Dermer and
Members of the City Commission

Date: May 18, 2005

From: Jorge M. Gonzalez
City Manager

Handwritten signature of Jorge M. Gonzalez.

Subject: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE MAYOR AND CITY CLERK, TO EXECUTE AN AMENDED AND RESTATED CONCESSION AGREEMENT BY AND BETWEEN THE CITY OF MIAMI BEACH AND BOUCHER BROTHERS MIAMI BEACH, LLC, FOR THE MANAGEMENT AND OPERATION OF BEACHFRONT CONCESSIONS ON THE BEACHES SEAWARD OF LUMMUS PARK, OCEAN TERRACE AND NORTH SHORE OPEN SPACE PARK, MIAMI BEACH, FLORIDA.**

ADMINISTRATION RECOMMENDATION

Adopt the Resolution.

BACKGROUND

In October 2001, Boucher Brothers Miami Beach, LLC (Boucher Brothers) was awarded the concession agreement to manage and operate the beachfront concessions seaward of certain City parks. The Agreement has an initial term of five (5) years (November 5, 2001 through November 4, 2006), and contains one 5 year option, subject to conclusion of good faith negotiations and mutually agreed upon terms and conditions.

The Agreement provided that at the end of the first contract year, the City and Boucher Brothers would meet to review Concessionaire's performance for said contract year to discuss quality, operational, maintenance and any other related issues. The City and Boucher Brothers met on several occasions to discuss certain contract provisions that should be revisited in order to address inconsistencies and operational issues that have been identified, including certain matters which should be memorialized which were not included in the original contract.

Since that time, the Administration has continued to meet with Boucher Brothers in an attempt to clarify the terms and conditions related to the aforementioned provisions, as well as addressing other matters which have subsequently occurred which have impacted their beachfront operations.

The City and Boucher Brothers have concluded negotiations with regard to all issues which have been incorporated in the attached Amended and Restated Concession Agreement, the most relevant of which, are summarized below:

Sec.#	Section Title	Issue(s)
2.1	Lummus Beach, Ocean Terrace, and North Shore Open Space Park Concession Areas	Buffer Zone language has been clarified and segregated to better define areas surrounding lifeguard stands, handicap access, etc.

Sec.#	Section Title	Issue(s)
3.1.4	Rental of Beach Equipment	1) Allowing that patrons, may themselves, relocate chairs and other beach equipment within a concession area and adjacent buffer zone, if permitted. 2) Allowing replacing certain standard chairs with luxury chairs, but if standard chair is requested and not available, luxury chair would be provided at standard chair rate.
3.2.1.1	Food and Beverage Service	Allowing for up to 5 stationary Ice Cream carts in Lummus Beach subject to design review approval
10.2.1	Garbage Receptacles and Storage Cell	Allowing for the creation of a landscaped Storage Cell (not to exceed 625 sq. ft.) adjacent to, and north of, the existing trash facility north of 10 th Street Auditorium, to alleviate storage of concession equipment.
3.4.3	Watersport Equipment Rental	During the waiver period addressed in 4.2.1 below, Concessionaire agreed to provide an off-duty police officer, on weekends and holidays to monitor watersport operations.
4.1	Minimum Guarantee (MG)	Clarification of first year "ramp-up" period provided to Concessionaire to allow for its amassing and deploying its full compliment of equipment, resulting in pro-rata \$137,500 credit applied in the 2 nd contract year.
4.2.1	Percentage of Gross (PG) vs. Minimum Guarantee (MG)	Credit for adverse impact related to City's sand excavation (from Lummus Beach) and renourishment (to 30 th Street) project, resulting a waiver of any amounts due in excess of the minimum guarantee for watersports in contract years 2 and 3, and only 62.5% of any amounts due in excess of the minimum guarantee would be due in year 4 (Also see 3.4.3 above)
5	Maintenance and Examination of Records	Concessionaire's requirement to use receipt printing cash registers or a like alternative as would be required by an independent CPA in order to audit a statement of annual gross receipts and profit and loss statement (see item below)
6	Inspection and Audit	Concessionaire's requirement to submit at the end of each contract year, an audited annual statement of gross receipts, in a form consistent with generally accepted accounting principles, has been replaced with alternative language requiring an annual statement of gross receipts accompanied by a report from an independent CPA firm which shall perform certain agreed upon procedures, as described in the attached Exhibit "6". Concessionaire has further agreed to reimburse the City, an amount equal to \$20,000, for the first 3 year audits, which were, or will be performed by the City. New agreed upon procedures will take effect in year 4.
10.7	Vehicles on the Beach	Amended to allow for golf carts and/or all terrain vehicles (ATV's), with a maximum total of 6 vehicles of any kind.
11.a.2	Insurance	Amend watersport liability insurance requirements to be consistent with regulations for all other beachfront concession operators.
12.5.b	Force Majeure	Added "direct acts of terrorism"
14	Performance Bond or Alternate Security	\$200,000 performance bond requirement language amended to increase to \$300,000 in 4 th year, instead of 2 nd year, and to increase to \$400,000 in 5 th year instead of 3 rd year, and also provides for alternate UCC-1 financing statement in lieu of bond, at City Manager's discretion.

Sec.#	Section Title	Issue(s)
16.4	Sponsorships	This section contains new language intended to clarify the parties rights, and exclusively reserves unto the City all present and future rights to negotiate all forms of endorsement and/or sponsorship agreements based on the marketing value the City may have, while allowing Concessionaire the right to sell, rent, or use, any particular brand/product that would be permitted for use or sale pursuant to this Agreement, and not limit its ability to negotiate reduced rates for same.

On April 27, 2005, the City's Finance and Citywide Projects Committee reviewed and discussed the terms and conditions being proposed as possible amendments to the Boucher Brothers Concession Agreement. The Committee unanimously approved same and recommended that the Amended and Restated Concession Agreement be forwarded to the Mayor and City Commission for their approval.

The administration recommends that the Mayor and City Commission accept the recommendations of the Finance and Citywide Projects Committee and approve the Amended and Restated Concession Agreement with Boucher Brothers Miami Beach LLC.

JMG:TH:JD:rd
Attachment

F:\DDHP\\$\ALL\ASSET\BEACHFRN\PUBLIC\RFP_2001\BOUCHER\AMENDED AND RESTATED MEM.DOC

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE MAYOR AND CITY CLERK, TO EXECUTE AN AMENDED AND RESTATED CONCESSION AGREEMENT BY AND BETWEEN THE CITY OF MIAMI BEACH AND BOUCHER BROTHERS MIAMI BEACH, LLC, FOR THE MANAGEMENT AND OPERATION OF BEACHFRONT CONCESSIONS ON THE BEACHES SEAWARD OF LUMMUS PARK, OCEAN TERRACE AND NORTH SHORE OPEN SPACE PARK, MIAMI BEACH, FLORIDA

WHEREAS, in October 2001, the Mayor and City Commission approved awarding a Concession Agreement to Boucher Brothers Miami Beach, LLC (Boucher Brothers) for the management and operation of beachfront concessions seaward of Lummus Park, Ocean Terrace, and North Shore Open Space Park, for an initial term of five (5) years (November 5, 2001 thorough November 4, 2006), with one 5 year option, subject to conclusion of good faith negotiations and mutually agreed upon terms and conditions; and

WHEREAS, the Agreement provided that at the end of the first contract year, the City and Boucher Brothers would meet to review Concessionaire's performance for said contract year to discuss quality, operational, maintenance and any other related issues; and

WHEREAS, the City and Boucher Brothers met on several occasions to discuss and renegotiate certain contract provisions in order to address inconsistencies and operational issues that have been identified, and should be memorialized; and

WHEREAS, the City and Boucher Brothers concluded negotiations and have agreed to the terms and conditions as reflected in an Amended and Restated Concession Agreement; and

WHEREAS, on April 27, 2005, the City's Finance and Citywide Projects Committee reviewed and discussed the terms and conditions of the proposed Amended and Restated Concession Agreement and unanimously recommended that same be forwarded to the Mayor and City Commission for their approval.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and

City Clerk, be authorized to execute an Amended and Restated Concession Agreement by and between the City of Miami Beach and Boucher Brothers Miami Beach, LLC, for the management and operation of beachfront concessions on the beaches seaward of Lummus Park, Ocean Terrace and North Shore Open Space Park, Miami Beach, Florida.

PASSED AND ADOPTED THIS 18th day of May, 2005.

Attest:

CITY CLERK

MAYOR

JMG:TH:JD:rlr

F:\DDHP\ALL\ASSET\BEACHFRN\PUBLIC\RFP_2001\BOUCHER\AMENDED AND RESTATED RES.DOC

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**



City Attorney

5-6-05

Date

Amended and Restated
Boucher Brothers
Miami Beach LLC
Beachfront
Concession
Agreement

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**AMENDED AND RESTATED
CONCESSION AGREEMENT BETWEEN
CITY OF MIAMI BEACH, FLORIDA AND
BOUCHER BROTHERS MIAMI BEACH LLC
FOR MANAGEMENT AND OPERATION OF BEACHFRONT CONCESSIONS
PURSUANT TO REQUEST FOR PROPOSALS NO. 22-00/01**

THIS AMENDED AND RESTATED AGREEMENT made the _____ day of _____, 2005, between the **CITY OF MIAMI BEACH**, a municipal corporation of the State of Florida (hereinafter called "City"), having its principal address at 1700 Convention Center Drive, Miami Beach, Florida, 33139, and **BOUCHER BROTHERS MIAMI BEACH LLC**, a limited liability company of the State of Florida, with offices at 420 Lincoln Road, Suite 265, Miami Beach, Florida, 33139 (hereinafter called "Concessionaire").

WITNESSETH

WHEREAS, in accordance with Management Agreement No. 750-0006 by and between the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida and the City, the City is vested with management of, jurisdiction over, and control of, all beaches in the City of Miami Beach; and

WHEREAS, on October 2, 1985, the Mayor and City Commission adopted Resolution No. 85-18222, approving a Concession Agreement, dated November 7, 1985, between the City and Penrod Brothers for the rental of beach equipment, water recreation equipment and food and beverage service at Pier Park, Oceanfront Park, and Lummus Park; and

WHEREAS, said Concession Agreement, as amended, was scheduled to expire on November 4, 2000 and, as such, on October 18, 2000, the Mayor and City Commission approved an amendment to the Concession Agreement, providing, in part, for a one year extension, to expire on November 4, 2001, to allow for the issuance of a Request for Proposals (RFP) for the future operation of beachfront concessions on the beaches seaward of Lummus Park, Ocean Terrace and North Shore Open Space Park; and

WHEREAS, on February 21, 2001, the Mayor and City Commission authorized the issuance of said RFP and same was subsequently issued; and

WHEREAS, on July 18, 2001, the Mayor and City Commission authorized the Administration to negotiate with Boucher Brothers Miami Beach, LLC, as the successful proposer; and

WHEREAS, the Administration successfully negotiated said Concession Agreement with Boucher Brothers Miami Beach, LLC, for the operation and management of beachfront concessions including beach equipment rentals, food and beverage sales, and watersport rentals on the beaches seaward of Lummus Park, Ocean Terrace and North Shore Open Space Park; said Agreement commenced on November 5, 2001, and is set to expire November 4, 2006, with an option to renew for an additional five (5) year term as provided

herein; and

WHEREAS, said Concession Agreement provided for the City and Boucher Brothers Miami Beach LLC, after the end of each contract year, to meet to review their performance for the previous contract year to discuss quality, operational, maintenance and other issues; and

WHEREAS, as a result of said review process, the City and Boucher Brothers Miami Beach LLC have agreed to amend and restate certain provisions of the Concession Agreement, which have been incorporated herein.

NOW THEREFORE, in consideration of the premises and the mutual covenants and conditions herein contained and other good and valuable consideration, the receipt and adequacy of which are hereby conclusively acknowledged, it is agreed by the parties hereto as follows:

The City hereby grants to the Concessionaire, and the Concessionaire hereby accepts from the City, the exclusive right to operate the following described concession within the Concession Areas in conformance with the purposes and for the period stated herein and subject to all the terms and conditions herein contained and fairly implied by the terms hereinafter set forth.

SECTION 1. TERM.

- 1.1 This Agreement shall be for an initial term of five (5) years, commencing retroactively on the fifth day of November, 2001 (the "Commencement Date"), and ending on the fourth day of November, 2006. For purposes of this Agreement, "contract year" shall be defined as that certain period commencing on November 5th, and ending on November 4th of the following year, throughout the Term of this Agreement.
- 1.2 Provided that the Concessionaire is not in default under Section 13 hereof, commencing upon written notice from Concessionaire to the City, which notice shall be given in the fourth contract year of the initial term (November 5, 2004 - November 4, 2005) and then no later than 180 days prior to expiration of said term, Concessionaire and the City shall negotiate exclusively with each other in good faith for a period of sixty (60) days to extend the term of this Agreement for an additional five (5) year period. Each of the parties agrees to use its respective best efforts to negotiate such an extension on such reasonable terms and conditions that are mutually agreed upon, excepting the financial terms set forth in Exhibit 1.2 hereto. The parties acknowledge and agree that the financial terms set forth in Exhibit 1.2 for such renewal term are fair and reasonable. In the event of such renewal, the financial terms contained in Exhibit 1.2 shall be the financial terms of the agreement pertaining to the renewal term of the Agreement. Any such renewal shall require Concessionaire to purchase new equipment for the

renewal term, subject to the prior written approval of the City. Concessionaire shall deliver to City, at least 180 days prior to the expiration of the initial term, (i) a schedule of any equipment which was replaced during the initial term, and (ii) an itemized list of proposed replacement equipment; both to be delivered to, reviewed, and approved by the City prior to commencement of negotiations for a renewal term.

SECTION 2. CONCESSION AREA(S).

The City hereby grants to the Concessionaire the exclusive right, during the term of this Agreement, to operate a concession as described herein in the following Concession Area(s) (hereinafter referred to individually as a "Concession Area" or collectively as the "Concession Areas"):

2.1 Lummus Park.

This Concession Area is limited to the beach area bounded on the south by the northernmost line of the 5th Street right-of-way; bounded on the north by the southernmost line of the 14th Lane right-of-way; bounded on the west by a line 50 feet east from the easternmost edge of the Dune; and bounded on the east either by a line 60 feet west of the Mean High Water Line (MHWL) or by a line 5 feet west of the westernmost lifeguard stand in this Concession Area, whichever is further east.

2.1.1 Lifeguard Facility Zone:

Concessionaire shall not use or deploy any equipment and/or facilities on or within those portions of the beach where lifeguard facilities/stands are currently located (e.g. 6th Street, 8th Street, 10th Street, 12th Street, 13th Street, and 14th Street, etc.), or may be located in the future, including the area extending from the easternmost foot of the Dune to the shoreline and bounded by a line one hundred (100) feet north of the lifeguard stand(s) and bounded by a line one hundred (100) feet to the south of such stand(s).

2.1.2 13th to 14th Street Zone:

With regard to the area bounded to the north by a line 50 feet to the north of the midpoint between 13th and 14th Streets, bounded to the south by a line 50 feet to the south of the midpoint between 13th and 14th Streets, and bounded to the east and west by the easternmost and westernmost boundaries of this Concession Area, respectively, Concessionaire shall not initially deploy any equipment, except in the event of demand.

2.1.3 9th to 10th Street Zone:

With regard to the area bounded to the north by a line 50 feet to the north of the midpoint between 9th and 10th Streets, bounded to the south by a line 50 feet to the south of the midpoint between 9th and

10th Streets, and bounded to the east and west by the easternmost and westernmost boundaries of this Concession Area, respectively, Concessionaire shall not initially deploy any equipment, except in the event of demand.

2.1.4 Southern Handicap Zone:
With regard to the area bounded to the north by a line 50 feet north of the southern boundary of this Concession Area, to the south by the southern boundary of this Concession Area, and bounded to the east and west by the easternmost and westernmost boundaries of this Concession Area, respectively, Concessionaire shall not deploy any equipment, unless specifically requested by a handicapped patron.

2.1.5 Northern Handicap Zone:
With regard to the area bounded to the south by a line 50 feet south of the northern boundary of this Concession Area, to the north by the northern boundary of this Concession Area, and bounded to the east and west by the easternmost and westernmost boundaries of this Concession Area, respectively, Concessionaire shall not deploy any equipment, unless specifically requested by a handicapped patron.

City and Concessionaire acknowledge that as of the Commencement Date of this Agreement, there are a total of six (6) lifeguard stands/facilities existing within the Lummus Park Concession Area and two (2) additionally proposed lifeguard stand/facility locations (location of which shall be determined by the City Manager or his designee) which for purposes of this Subsection 2.1 shall be considered as if they were also existing, bringing the total number of lifeguard stands/facilities to eight (8). As such, City and Concessionaire agree that if and when the total number of lifeguard stands/facilities in the Area is ten (10), then, in the event more lifeguard stands/facilities are added, the size of the buffer area around the lifeguard stands/facilities shall be reduced so as not to further reduce the size of the Concession Area.

The City and Concessionaire agree and acknowledge that the public's use of the beach is of prime consideration; accordingly, with regard to this Concession Area, the Concessionaire shall at all times use reasonable efforts to strive to maintain approximately forty nine (49%) percent of the beach frontage within the entire Lummus Park beach area free and clear of Concessionaire facilities, beach equipment, and watersport equipment, so that such portion of the beach may remain free and clear for the public's use and enjoyment.

2.2 Ocean Terrace.

This Concession Area is limited to the beach area bounded on the south by the northernmost line of the 73rd Street right-of-way; bounded on the north by the southernmost line of the 75th Street right-of-way; bounded on the

west by a line 50 feet east from the easternmost edge of the Dune; and bounded on the east either by a line 60 feet west of the Mean High Water Line (MHWL) or by a line 5 feet west of the westernmost lifeguard stand in this Concession Area, whichever is further east.

- 2.2.1 **Lifeguard Facility Zone:**
Concessionaire shall not use or deploy any equipment and/or facilities on or within those portions of the beach where lifeguard facilities/stands are currently located (e.g. 74th Street), or may be located in the future, including the area extending from the easternmost foot of the dune to the shoreline and bounded by a line one hundred (100) feet north of the lifeguard stand and bounded by a line one hundred (100) feet to the south of such stand.

- 2.3 **North Shore Open Space Park.**
This Concession Area is limited to the beach area bounded on the south by the northernmost line of the 79th Street right-of-way; bounded on the north by the southernmost line of the 87th Street right-of-way; bounded on the west by a line 50 feet east from the easternmost edge of the Dune; and bounded on the east either by a line 60 feet west of the Mean High Water Line (MHWL) or by a line 5 feet west of the westernmost lifeguard stand in this Concession Area, whichever is further east.

- 2.3.1 **Lifeguard Facility Zone:**
Concessionaire shall not use or deploy any equipment and/or facilities on or within those portions of the beach where lifeguard facilities/stands are currently located (e.g. 79th Street, 81st Street, 83rd Street, and 85th Street), or may be located in the future, including the area extending from the easternmost foot of the dune to the shoreline and bounded by a line one hundred (100) feet north of the lifeguard stand and bounded by a line one hundred (100) feet to the south of such stand.

- 2.4 Notwithstanding the Concession Area(s) granted to Concessionaire above, Concessionaire herein understands, agrees, and acknowledges that the aforesated Concession Area(s), along with any and all other public beachfront area(s) not specifically identified herein, are public and, as such, must remain available for the use and enjoyment of the general public whether or not the public chooses to use any of Concessionaire's equipment, purchase its products, or engage in any of the services it provides. In the event that a member of the public is within a particular Concession Area, as set forth herein, Concessionaire agrees to allow for his/her continued peaceful enjoyment of said Area.

- 2.5 City and Concessionaire acknowledge that the buffer zones around the lifeguard stands/facilities referenced above shall not apply to other areas of

the beach (i.e. non-Concession Areas) in which the upland owner is a private entity, unless the City's Rules and Regulations for Beachfront Concessions, as same may be amended from time to time, explicitly so provide. Notwithstanding the preceding sentence, the provisions of this subsection shall in no way be deemed or otherwise construed as a waiver on the part of the City of its Rules and Regulations for Beachfront Concessions.

2.6

Buffer Zones:

City and Concessionaire acknowledge that there are certain areas within Lummus Park Beach, Ocean Terrace Beach, and North Shore Open Space Park Beach, that either lie outside of the respective Concession Areas, or Concessionaire's use of which is limited and/or restricted, including Lifeguard Facility Zones (defined in Sections 2.1.1, 2.2.1, 2.3.1); Handicap Zones (defined in Section 2.1.4, 2.1.5) and other defined Zones (Sections 2.1.2 and 2.1.3) which were designed to facilitate public access to the ocean and shoreline and create buffer zones between Concession Areas and Lifeguard facilities.

SECTION 3. USE(S).

The Concessionaire is hereby authorized to conduct the following kind(s) of businesses and provide the following kind(s) of services within the Concession Area(s), as provided below; all at its sole cost and expense:

3.1

Rental of Beach Equipment.

This shall generally include the rental of chairs, pads, umbrellas and sun canopies. The City herein approves the rental of beach equipment, as defined in the preceding sentence and the prices for same; all as set forth in Exhibit 3.1. Any amendments to Exhibit 3.1, whether as to type(s) of beach equipment to be rented or as to changes in prices for same, must be approved in writing by the City Manager or his designee prior to such changes being implemented within the Concession Area(s), and a new updated Exhibit 3.1 will be incorporated into this Agreement.

3.1.1

The design, type, material, and color of any and all beach equipment, as defined above, shall be approved in writing by the City's Planning Department prior to the Commencement Date of this Agreement. A photo or photo(s) of such City approved beach equipment is incorporated herein as Exhibit 3.1.1. Thereafter, Concessionaire shall not change, alter, or modify said City approved design, type, material and color of any beach equipment without the prior written consent of the City Manager or his designee, and, if so approved, an updated Exhibit 3.1.1 will be made a part of and incorporated into this Agreement.

- 3.1.2 With regard to an individual Concession Area, all respective beach equipment within that Area shall be placed substantially in accordance with the attached site plan(s), herein approved by the City and as set forth, by designated Area, in Exhibit(s) 3.1.2, attached hereto and incorporated herein. Concessionaire shall not deviate from or alter the approved site plan(s) without the prior written consent of the City Manager or his designee.
- 3.1.3 The set up of beach equipment to be placed within a Concession Area, substantially in accordance with the site plan(s) approved pursuant to Exhibit(s) 3.1.2, shall be permitted daily before 10:00AM or as soon thereafter in the event of inclement weather (as soon as weather permits) (the "Set Up Period") during which time Concessionaire shall be permitted to set up to the maximum number (as defined in Exhibit(s) 3.1.5) of beach equipment allowable for that particular area. In addition to conformance with the approved site plan(s), daily placement of beach equipment for the Set Up Period shall be in accordance with and shall not exceed the maximum numbers, per Area, set forth in Exhibit(s) 3.1.5, attached hereto and incorporated herein.
- 3.1.4 The parties acknowledge that Concessionaire's patrons may themselves relocate chairs and other beach equipment within a Concession Area and/or to an immediately adjacent "Buffer Zone". Such relocation shall be permitted, provided that, in the aggregate, Concessionaire does not materially alter, or allow to be materially altered, the configuration of a particular Concession Area, as set forth in the site plan(s) approved pursuant to Exhibit(s) 3.1.2, and/or an adjacent "Buffer Zone". In the event of this occurrence, Concessionaire shall immediately correct any material alteration within a Concession Area to bring same back into substantial conformance with the approved site plan(s).
- Moreover, if Concessionaire determines to replace a certain number of standard chairs with luxury chairs (above the number of luxury chairs currently permitted under this Agreement) at any time (not to exceed the aggregate maximum number of chairs permitted under this Agreement), thereafter if any member of the public desires a standard chair which is unavailable due to such replacement, Concessionaire shall provide a luxury chair at the standard chair rate.
- 3.1.5 The City and Concessionaire agree and acknowledge that the public's use of the beach is a prime consideration and must be balanced accordingly with the services to be provided to the public and the respective financial remunerations to City and Concessionaire, pursuant to this Agreement. Accordingly, notwithstanding the site

plan(s) and maximum numbers (as provided for in the Set Up Period) set forth in Subsection 3.1.3 above, Concessionaire further agrees that, notwithstanding its right to set up its maximum numbers during the Set Up Period, if during the entire period of time between said Set Up Period and 1:00PM Standard Time or 2:00PM daylight savings time, as applicable, of any day during the hours of operation herein, more than twenty-five percent (25%) of Concessionaire's maximum number of each type of beach equipment for a particular area was vacant ("vacant" being defined as the beach equipment not being rented), then Concessionaire shall remove at 1:00PM Standard Time, or 2:00PM daylight savings time, as applicable, that day from the particular area that number of items of each type of beach equipment that equates to the difference between such percentage of vacant equipment and twenty-five percent (25%) of such equipment as described above (For example, assuming that 100 chairs are the maximum, if 100 chairs are set up in an area during the Set Up Period, and 60 are rented and 40 are vacant, then at 1:00PM or 2:00PM, as applicable, Concessionaire must remove 15 chairs, which equals the difference between the actual number of vacant (non-rented) chairs minus 25% of the maximum number of chairs allowable during the Set Up Period). If items of equipment are removed as provided in the preceding sentence, Concessionaire may later that day increase the number of items of beach equipment based upon demonstrated increased demand; provided, however, in no event shall the increased number of chairs in any particular area exceed the maximum number for that area by twenty percent (20%), without the prior written consent of the City Manager or his designee.

Notwithstanding the preceding paragraph, within thirty (30) days after the end of each contract year, City and Concessionaire may meet as provided in the last paragraph of Section 6 hereof to review, and subject to mutual agreement of City and Concessionaire, revise, the maximum numbers (as provided for in the Set Up Period) set forth in Subsection 3.1.3 and the formula for removal of vacant beach equipment set forth in this Subsection 3.1.5.

- 3.1.6 The condition and quality of Concessionaire's beach equipment shall at all times be maintained in a manner that is consistent with the condition and quality of first class concession beach equipment located at public beaches adjacent to world class beach resorts. It is the City's intent, and Concessionaire hereby agrees and acknowledges same, to develop and promote world class public beach concession facilities and operations that would be comparable to those found at other world class public beach concession facilities. Accordingly, Concessionaire shall not only, at a minimum, maintain all beach equipment placed within the Concession Areas in usable

condition, but shall adhere, as indicated in this subsection, to high ongoing maintenance standards for same. Following the Commencement Date of this Agreement, the City may, at its option, request that Concessionaire provide it with a full inventory of all beach equipment contemplated for use herein, including types and numbers (per item); dates of lease and/or purchase; and initial condition, established as of the date of inventory. Thereafter, City and Concessionaire shall jointly prepare a plan and schedule for the ongoing replacement and/or updating of beach equipment throughout the term of this Agreement.

- 3.1.7 City and Concessionaire acknowledge that the buffer zones around the lifeguard stands/facilities referenced herein shall not apply to other areas of the beach (i.e. non-Concession Areas) in which the upland owner is a private entity, unless the City's Rules and Regulations for Beachfront Concessions, as same may be amended from time to time, explicitly so provide. Notwithstanding the preceding sentence, the provisions of this subsection shall in no way be deemed or construed as a waiver on the part of the City of its Rules and Regulations for Beachfront Concessions.

3.2 Food and Beverage Service.

- 3.2.1 Concessionaire shall prepare, or cause to be prepared, for sale within each respective Concession Area herein, such cooked, prepared, and/or prepackaged foods and such non-alcoholic beverages, as those set forth in Exhibit 3.2.1, attached hereto and incorporated herein. However, actual cooking and heating from Concessionaire's on-site facilities shall not be allowed, except if allowed pursuant to Subsection 3.2.7. The City herein approves the types of food and beverages, and prices for same, as those set forth in Exhibit 3.2.1. Any amendments to Exhibit 3.2.1, whether as to type of food and beverages to be sold, or as to changes in prices for same, must be approved in writing by the City Manager or his designee prior to such changes being implemented within the Concession Area(s), and a new updated Exhibit 3.2.1 will be incorporated into this Agreement.

- 3.2.1.1 Additionally, Concessionaire shall be permitted to utilize no more than five (5) non-motorized, stationary carts in the Lummus Park Concession Area, as defined in Subsection 2.1, to dispense ice cream. The design, size, type, material, and color of any and all ice cream carts shall be approved in writing by the City's Planning Department. The location of same shall be designated within Concessionaire's site plan(s) as referenced in Exhibit 3.1.2. A photo or photo(s) of such City approved ice cream cart(s) is incorporated herein as Exhibit

3.2.1.1. Thereafter, Concessionaire shall not change, alter, or modify said City approved ice cream cart(s) without prior written consent of the City Manager or his designee, and if so approved, an updated Exhibit 3.2.1.1 will be made a part of and incorporated into this Agreement.

3.2.2 The City herein approves and acknowledges Concessionaire's use of Monty's Miami Beach LLC to provide the food and beverage services contemplated within this Subsection 3.2 and this Agreement (the "Subconcessionaire").

In the event that Subconcessionaire is or will no longer be associated with Concessionaire, or otherwise ceases to participate in the Agreement, then any replacement subconcessionaire selected by Concessionaire shall be subject to the prior written approval of the City Manager or his designee. Concessionaire shall submit a minimum of three (3) replacement subconcessionaires; said replacements to be submitted no later than sixty (60) days prior to Subconcessionaire's last day of participation in this Agreement, or if Concessionaire receives less than sixty (60) days advance notice of Subconcessionaire's cessation of services, then said replacements shall be submitted to the City Manager or his designee no later than sixty (60) days after Concessionaire becomes aware the Subconcessionaire has ceased operations or will cease operations. In the event that the City Manager or his designee declines in writing to approve all such proposed replacement subconcessionaires, following submittal of the same by Concessionaire, then the City Manager or his designee, at his sole option, may terminate this Agreement for cause without further demand or notice.

3.2.3 All food and beverages sold within the Concession Areas will be properly prepared and served in compliance with all applicable health and sanitary standards, laws and regulations.

3.2.4 The quality of food, beverages, and service offered will be first-rate and comparable to that available on public beaches adjacent to world class beach resorts on par with the City of Miami Beach or, at a minimum, to the quality of food, beverages, and service provided by concessionaires behind privately owned hotels within the City of Miami Beach.

3.2.5 In addition to Concessionaire's maintenance obligations for the Concession Areas in general, as set forth in Section 10 hereof, all food and beverage dispensing facilities, and the immediately surrounding 25-foot adjacent areas, shall at all times be maintained in a clean and sanitary manner. At least one supervisory employee must

possess a Food Service Management Certification issued by a County Public Health Department in Florida, as required by law. In addition, each food service facility must be licensed by the Florida Department of Business Regulation, Division of Hotels and Restaurants, and/or the Department of Agriculture, and/or as may further be required by State law and as required by corresponding agencies.

3.2.6 Food and beverage services shall be offered daily to patrons at all times during the Concession Area(s) hours of operation, as set forth in Section 9 herein; provided that if Concessionaire can show, to City's reasonable satisfaction, that if either an increase or decrease in demand for such service exists in one or all of the Concession Areas then, in that event, Concessionaire shall obtain the City's prior consent in writing, before extending or decreasing service beyond the hours of operation.

3.2.7 Notwithstanding the prohibition on cooking and heating, as set forth in Subsection 3.2.1, the City Manager or his designee may allow cooking and heating in the Ocean Terrace and North Shore Open Space Park Concession Areas, if recommended by the North Beach community, which shall include, but not be limited to, the advisory recommendations of the North Beach Development Corporation, and North Beach area hotels and restaurants. Notwithstanding a recommendation from the North Beach community to allow cooking and heating in the Ocean Terrace and North Shore Open Space Park Concession Areas, the final recommendation shall rest with the City Manager or his designee.

3.3 Sale of Beach Related Sundries.

This shall generally include the sale of those sundry items identified in Exhibit 3.3, substantially in accordance with the price ranges set forth therein. Any amendments to Exhibit 3.3, whether as to changes and/or additions of items to be offered for sale, or in the respective price ranges for same, must be approved in writing by the City Manager or his designee, prior to such changes and/or additions being implemented within the Concession Area(s), and a new updated Exhibit 3.3 will be incorporated into this Agreement.

3.3.1 City and Concessionaire herein acknowledge and agree that the sale of beach sundries pursuant to this Subsection is contemplated and therefore approved as an optional service. Accordingly, in the event the City Manager or his designee determines, at his sole option and discretion, that the provision of this optional service is no longer desired, then the City may revoke Concessionaire's right to provide said optional service, without cause, upon thirty (30) days written

notice to Concessionaire. Any percentage of gross paid by Concessionaire to City for this optional service, pursuant to Subsection 4.3.1 of the Agreement, shall be prorated and/or adjusted accordingly as of the date of termination for said optional service, and no further payment shall be required for same during the term of this Agreement, unless the City reinstates the optional service, at which time the payment provisions of Subsection 4.3.1 shall once again apply.

Notwithstanding anything herein to the contrary, the sale of lotions, oils and skin care products (collectively, "Skin Care Products") are approved hereby and are not considered an optional service. The City herein approves the sale of Skin Care Products and the prices for same, all as set forth in Exhibit 3.1. Any amendments to Exhibit 3.1, whether as to type(s) of Skin Care Products to be sold, or as to changes in prices for same, must be approved in writing by the City Manager or his designee prior to such changes being implemented within the Concession Area(s), and a new updated Exhibit 3.1 will be incorporated into this Agreement.

3.4 Watersport Equipment Rental.

3.4.1 At this time, City and Concessionaire agree and acknowledge that watersport equipment rentals shall include only the rental of eight (8) waverunners, one (1) parasail boat, one (1) banana boat and six (6) kayaks. Any future requests for other watersport equipment activities or additional items of the watersport equipment referenced above must be approved in writing by the City Manager or his designee, who shall first obtain a non-binding recommendation from the City's Marine Authority Board. The City herein approves the rental of that watersport equipment, as defined in this Subsection and the prices for same; all as set forth in Exhibit 3.4.1. Any amendments to Exhibit 3.4.1, whether as to type(s) or number of watersport equipment to be rented, or as to changes in prices for same, must be approved in writing by the City Manager or his designee prior to such changes being implemented within the Concession Area(s), and a new updated Exhibit 3.4.1 will be incorporated into this Agreement.

3.4.2 City and Concessionaire herein acknowledge and agree that the rental of watersport equipment pursuant to this subsection is contemplated and therefore approved as an optional service. Accordingly, in the event the City Manager or his designee determines, at his sole option and discretion, that the provision of this optional service is no longer desired, then the City may revoke Concessionaire's right to provide said service, without cause, upon thirty (30) days written notice to Concessionaire. Any minimum

guarantee on options or percentage of gross paid by Concessionaire to City for this optional service, pursuant to Subsections 4.2.1 and 4.3.1 of the Agreement, respectively, shall be prorated and/or adjusted accordingly as of the date of termination for said optional service, and no further payment shall be required for same during the term of this Agreement, unless the City reinstates the optional service, at which time the payment provisions of Section 4 shall once again apply. Because a minimum guarantee on this optional service, is paid in advance, City agrees to refund such prorata minimum guarantee to Concessionaire upon sixty (60) days written demand from Concessionaire.

- 3.4.3 City and Concessionaire agree and acknowledge that watersport equipment rentals, as contemplated in Subsection 3.4.1 above, shall be permitted only from a designated channel, to be located on the beachfront at Ninth (9th) Street. During the term of the Watersport PGO Waiver (as defined in Subsection 4.2.1), Concessionaire agrees, at its sole cost and expense, to provide one off-duty police officer during weekends and federal holidays to monitor the watersport channel, during all times that watersport channel is operating. Concessionaire's future use of any alternate or additional channel(s) is subject to the prior written approval of the City Manager or his designee, who shall first obtain a non-binding recommendation from the City's Marine Authority Board. Notwithstanding the preceding sentences of this subsection, the City Manager or his designee may consider the establishment of watersport channel(s) in the Ocean Terrace and/or North Shore Open Space Park Concession Areas. In addition to consideration of these channel(s) by the Marine Authority, the City shall also consider the non-binding and advisory recommendations of including, but not limited to, the following: North Beach Development Corporation, North Beach area hotels and restaurants and the City's Beach Patrol. Results of this process will be provided first to the Marine Authority and, having obtained their recommendation, to the City Manager or his designee for final consideration. This process, exclusive of the City Manager's final recommendation, shall be completed no later than six (6) months following the approval of this Amended and Restated Concession Agreement by the Mayor and City Commission.

All channels shall be used as an access route through which users of watersport equipment may leave the beachfront and enter open water. Said channel(s) shall be a minimum of fifty (50) feet in width and shall extend 300 feet east, and perpendicular to the shore line and be marked by removable high visibility orange colored buoys which shall be a minimum of eighteen (18) inches in diameter. There shall be a minimum of eight (8) buoys on each side of the channel,

equally spaced. All buoys shall be clearly marked "IDLE SPEED" in six (6") inch high letters. Specifications or a sample of the line to be used for the channel buoys must be sent to the Bureau of Protected Species for approval prior to use.

Watercraft shall not exceed "idle speed" within the channel.

- 3.4.4 All watersport concession operations must have a "chase boat" and properly certified concession staff, readily available to operate same. The chase boat must be positioned at the eastern end of the watersport channel, if any rented watercraft are in the water, unless the chase boat is being used for other customary life safety related functions related to the approved watersport operation(s). The chase boat must be capable of catching, and performing a proper rescue of, all watercraft which are available for rent. The chase boat must be readily available for use and be safely located on shore, or within the channel, unless monitoring or recalling a patron. In addition to these requirements, all chase boat operators shall wear high visibility yellow colored personal floatation devices when operating the chase boat. When the chase boat is on shore, said high visibility yellow colored personal floatation device shall be placed on top of the chase boat, in order to identify same. All concession staff must be properly certified (complete boater's education course approved by the NASBLA or pass the State of Florida "How to Boat Smart" course), and wear the required identification badge to reflect same, and staff must be readily available at all times that concession is operating.
- 3.4.5 The operation of all watersport equipment shall be conducted east of the 300-foot swimming area ("guarded area") and no closer than 400 feet of any lifeguard stand. Concessionaire is responsible for instructing clients on the safe operation of watersport equipment, including advising them to stay away from all "guarded areas." The "guarded area" extends 300 feet east of the shoreline and 100 feet from the nearest bather or swimmer.
- 3.4.6 The Concessionaire must instruct all users as to all safety precautions, including avoidance of swimmers and bathers, and inform said users of any and all Municipal, County, State and Federal requirements associated with the use of the respective watersport equipment.
- 3.4.7 All concession activities, including the placement and/or use of umbrellas, sun canopies, watersport equipment, and any and all other concession-related equipment, shall not obstruct the view of a lifeguard. Any request from a lifeguard to relocate any item that

obstructs his/her view shall be complied with immediately by the Concessionaire.

- 3.4.8 Concessionaire shall not knowingly permit anyone under the minimum age, as required by Federal, State, County or Municipal law (unless appropriate written consent of the parent or guardian is provided, pursuant to applicable law), nor anyone under the influence of alcohol or other mood altering drug, to rent, or use any watersport equipment. Concessionaire shall not knowingly permit anyone under the age of 18 to rent watersport equipment. Concessionaire shall not knowingly permit anyone under the age of 16 to operate motorized watercraft equipment. Concessionaire shall not knowingly permit, until October 1, 2001, a person born after September 30, 1980, and on or after October 1, 2001, a person 21 years of age or younger, to operate a marine vessel of 10 horse power or more, unless such person has in his/her possession aboard the vessel, a photo identification and proof of completion of a boater education course approved by the State of Florida, and/or the National Association of State Boating Law Administrators.
- 3.4.9 Concessionaire shall supply all users of watersport equipment with the appropriate United States Coast Guard approved "personal flotation device" in appropriate sizes. Proper "personal flotation devices" must be "speed rated".
- 3.4.10 All watersport equipment shall be maintained at Concessionaire's sole cost and expense and shall meet the registration and licensing requirements of the State of Florida, and any other governing agency. Concessionaire agrees that all motorized watersport equipment shall be at minimum of commercial grade and quality. All motorized watersport equipment shall be no more than two (2) model years old. City reserves the right to request proof of title or other proof of purchase related to such equipment in order for the City to properly monitor this requirement. To assure that all watersport equipment is at all times maintained in accordance with the highest industry standards, the City reserves the right to request periodic service and/or maintenance reports, to be provided and, if required, certified or otherwise guaranteed by Concessionaire, at its sole cost and expense. As new fuel injected four (4) stroke engines are developed and become available on motorized watersport equipment, Concessionaire shall replace within two years of the reasonable availability of such fuel injected four (4) stroke engines, all of its motorized watersport equipment regarding this Agreement with the new models; provided, however, without limitation, Concessionaire shall not have to replace such equipment with such fuel injected four (4) stroke engines if it is not economically feasible.

- 3.4.11 All motorized watercraft shall be equipped with "kill-switches" in proper working order.
- 3.4.12 All watersport equipment shall be clearly marked to identify the specific concessionaire with ten- inch (10") high, one and one-half inch (1 2") thick, contrasting numbers.
- 3.4.13 Any fueling of watercraft on the beach must comply with FDEP, Miami-Dade County DERM and USCG Regulations.
- 3.4.14 Concessionaire must be equipped, on site, with operating fire extinguisher and cellular/wireless type telephone.
- 3.4.15 Concessionaire must provide renters or users a thorough demonstration of the operation of the rented watersport equipment and use of all safety equipment, including but not limited to handling characteristics of personal watercraft. Furthermore, all renters and users must be instructed as to the location and proper usage of all on-board safety equipment, including but not limited to fire extinguisher(s).
- 3.4.16 Concessionaire must inform all watersport equipment renters or users as to the locations of known diving areas and reefs, how to identify a diving flag, and instruct them to maintain a minimum 100' distance from dive flags, swimmers, other boaters, markers and marked areas.
- 3.4.17 Concessionaire shall have, at a minimum during peak usage ("peak usage" defined as anytime in which eight (8) motorized watersport equipment items are present at the subject Concession Area), three (3) employees on site while the watersport equipment concession is open, provided however, that this number may be increased from time to time, if required by the City Manager or his designee. Concessionaire shall have at least one (1) Red Cross Lifeguard Course certified employee, on duty at all times during which the watersport equipment concession is open.
- 3.4.18 Any and all watersport concession activities shall only be conducted when the weather conditions and the conditions of the surf permit for the safe operation of same. Concessionaire shall inform each and every prospective patron that if the Beach Patrol of the City of Miami Beach (Beach Patrol) determines that conditions are unsafe or hazardous, he or she may be required to immediately come to shore and discontinue using the watersport equipment. In the event that conditions are of such a nature that the Beach Patrol deems them unsafe or hazardous to the individuals who are operating watersport equipment, or to the swimmers and bathers in the vicinity of said

equipment, the Beach Patrol shall request that Concessionaire discontinue operating its respective watersport concession. Once it is concluded that unsafe or hazardous conditions exist, the Beach Patrol shall notify Concessionaire verbally and/or by posting a banner or flag indicating same, on or in the vicinity of the Lifeguard stands advising of the unsafe or hazardous conditions. Upon such notification and/or posting of said banner, Concessionaire shall be required to immediately cease renting any and all watercraft and watersport equipment, and shall call for all watercraft equipment that is in the water, to come to shore. Concessionaire will be solely responsible to ensure that any watercraft and/or watersport equipment under its jurisdiction be immediately brought to shore. The determination that an unsafe or hazardous condition exists will be at the sole discretion of the Beach Patrol.

- 3.4.19 All watersport concession operations shall open no earlier than one (1) hour after sunrise daily, and close no later than one (1) hour before sunset daily. All watercraft and watersport equipment shall be on shore at least one (1) hour after sunrise and be returned to shore no later than one (1) hour before sunset. Failure to comply with these hours, for the first violation, will result in a warning; a second violation within a one (1) year period will result in an immediate two (2) week suspension of the Concessionaire's grant to conduct watersport equipment rentals pursuant to this Agreement, said suspension effective immediately upon written notice to Concessionaire. A third offense within a one (1) year period during the term herein may, at the City's sole option and discretion, result in a partial termination of the Agreement; said partial termination revoking Concessionaire's right hereunder to operate watersport equipment rentals, effective upon thirty (30) days written notice to Concessionaire.
- 3.4.20 Concessionaire agrees and understands that the maximum horsepower of any motorized watersport equipment intended to be used for rental purposes shall not exceed 750 cubic centimeters ("cc"), and chase vessels shall not exceed 1200 cc. However, in the event the 750 cc or 1200 cc models are no longer manufactured and/or cost prohibitive, then the City Manager or his designee may approve, at his sole discretion, other comparable equipment.
- 3.4.21 Concessionaire agrees and understands that in the event of any accident or collision involving any of its watersport equipment, it must complete and submit a written report to the City's Marine Patrol, with copies to the City's Beach Patrol and Office of Asset Management.

3.5 Storage of Concession Facilities/Equipment.

- 3.5.1 The design, materials, color, signage, etc. of facilities to dispense services and/or for storage proposed to be used by Concessionaire within the Concession Area(s) must obtain City design review approval prior to the Commencement Date of this Agreement and said facilities shall be incorporated herein as Exhibit 3.5.1. The size of the food and beverage trailers shall be no larger than 8 feet by 12 feet; provided, however, if cooking or heating is allowed at any Concession Area, then the size of such food and beverage trailers at such Concession Area shall be no greater than 8 feet by 16 feet. The location of same must be approved by the City Manager or his designee, and shall be designated within Concessionaire's proposed site plan(s) as referenced in Exhibit 3.1.2. Concessionaire shall not deviate from or change the type, design and/or location of its proposed storage/dispensing facilities without the prior written consent of the City Manager or his designee.
- 3.5.2 Prior to the Commencement Date of this Agreement, Concessionaire shall provide the City Manager or his designee with a written plan for storage and removal of Concessionaire's beach equipment; removal of dispensing facilities; and storage and removal of watersport equipment, for approval by the City Manager or his designee. This shall include the use of any storage facilities contemplated in Subsection 3.5.1 above. The aforesaid written storage plan and dispensing and/or storage facilities, as approved pursuant to Subsection 3.5.1 above, shall comply with the City's Rules and Regulations for Beachfront Concession Operations in effect on the date of adoption of this Agreement by the Mayor and City Commission, without regard to any subsequent amendment to such Rules and Regulations. Notwithstanding the preceding sentence, in the event that the State of Florida deems that those provisions in the City's Rules and Regulations for Beachfront Concession Operations pertaining to storage of concession facilities are deemed not to comply with State law, then the City and Concessionaire shall immediately take such actions as necessary so as to bring said provisions into compliance. Accordingly, for the City, this shall mean reviewing and revising its Rules and Regulations for Beachfront Concession Operations to bring same into compliance with State law. For Concessionaire, this shall mean, as necessary, revising its storage plan and/or either altering or removing its facilities from the Concession Areas, at Concessionaire's sole cost and responsibility. Concessionaire herein further acknowledges that it shall not hold the City liable for any expenses and/or other damages incurred as a result of compliance with State requirements as referred to in this

subsection, except in the event of the willful misconduct or gross negligence of City, its agents or employees.

3.6 Hurricane Evacuation Plan.

Concessionaire agrees that all its storage and dispensing facilities, beach equipment, watersport equipment, and any and all other equipment or other items used in the concession operations will be removed from the beachfront immediately within eight (8) hours of the issuance of a Hurricane Warning by the Miami-Dade County Office of Emergency Management, and stored at an approved, private, off-site location. Prior to the Commencement Date of this Agreement, Concessionaire shall provide the City Manager or his designee with a hurricane preparedness/evacuation plan, which shall include the location and proof of ownership and/or control by Concessionaire (either through a deed, lease or other form satisfactory to the City Manager and/or his designee) of a proposed hurricane storage facility; both of which shall be attached as Exhibit 3.6 to this Agreement.

3.7 Sea Turtles.

Concessionaire agrees and understands that the State of Florida has advised that in order to place facilities and/or equipment on the beach, surveys for marine turtle nesting activity must be ongoing, and have been conducted daily for 65 days previous to the initial date of operation or beginning May 1, of each year. The Concession Area(s) are currently surveyed by the Beach Maintenance Division of the Miami-Dade County Parks and Recreation Department.

- a. It is the responsibility of the Concessionaire to abide by any order issued by the State of Florida and/or cooperate with Miami-Dade County to ensure that nesting surveys may be conducted in accordance with the conditions set forth by the State.
- b. In the event an unmarked marine turtle nest is exposed, or a dead, injured, or sick marine turtle is discovered, the Florida Marine Patrol (1-800-DIAL-FMP) shall be notified immediately such that appropriate conservation measures may be taken.
- c. No temporary lighting associated with the concession will be permitted at any time during the marine turtle nesting season and no permanent lighting is authorized.
- d. The placement and removal of facilities and equipment on the beach seaward of 230 feet from the high water line shall be conducted during daylight hours and shall not occur in any location prior to completion of the necessary marine turtle protection measures.

- e. The beach area seaward of the 230-foot setback from the high water line should be cleared of all furniture and equipment, except lifeguard equipment, at nights during the turtle-nesting season.
- f. Disturbing the existing beach, and dune topography and vegetation is prohibited.

3.8 City Occupational Licenses.

Concessionaire shall obtain, at its sole cost and expense, any occupational licenses required by City law, as amended from time to time, for the proposed uses contemplated in Section 3 of the Agreement. To the extent required by City law, as same may be amended from time to time, occupational licenses shall be obtained for each proposed use within a particular Concession Area (e.g. Lummus Park Concession Area, Concessionaire would be required to obtain four (4) occupational licenses for: (i) Rental of Beach Equipment; (ii) Food and Beverage Service; (iii) Sale of Beach-related Sundries; and (iv) Rental of Watersport Equipment).

SECTION 4. CONCESSION FEES.

4.1 Minimum Guarantee (MG):

In consideration of the City executing this Agreement and granting the rights provided in this Agreement, on November 5th of each year (except as provided below) during the initial term of the Agreement, the Concessionaire shall pay to the City a Minimum Guaranteed Annual Concession Fee (MG) for Food and Beverage Sales, Beach Equipment Rentals, and the Sale of Skin Care Products of four hundred twelve thousand five hundred dollars (\$412,500) (except as provided below); provided, however, the MG for the first contract year (a "contract year" being defined as that certain period from November 5th to November 4th of the following year) shall be due on March 5, 2002, representing the prorated MG payment for November 5, 2001 to March 4, 2002, for the first contract year that is applied to the second contract year; provided further, however, the amount of the MG payment for the second contract year shall be reduced by the sum of one hundred thirty seven thousand five hundred dollars (\$137,500). Notwithstanding any reduced MG payment for the second contract year, for purposes of (i) the annual five percent (5%) increase of MG; (ii) calculation of the percentage of gross, as set forth in Subsection 4.2; and (iii) any other term and condition of this Agreement relating to the MG, the base dollar amount used shall be the original MG contemplated in the Agreement, which is \$412,500.

Commencing with the second contract year, said MG shall be automatically increased, by five percent (5%) per year, from the previous year's MG, and shall be due and payable to the City on November 5th of each year during the term of this Agreement.

4.1.1

Minimum Guarantee on Optional Services (MGO):

In addition to the above stated MG, the Concessionaire shall pay to the City on March 5, 2002, and thereafter on November 5th of each year during the initial term of the Agreement, a Minimum Guaranteed Annual Concession Fee for the City approved Optional Services (MGO). The optional service, to which MGO is applicable, contemplated at this time is the rental of watersport equipment. MGO is not applicable to the sale of sundries or Skin Care Products. The MGO for watersport equipment rentals is thirty thousand dollars (\$30,000). Commencing with the second contract year, said MGO shall be automatically increased, by five percent (5%) per year, from the previous year's MGO, and shall be due and payable to the City on November 5th of each year during the term of this Agreement.

4.2

Percentage of Gross (vs.) MG(PG):

For each contract year, in the event that the applicable amount as set forth in Exhibit 4.2 of Concessionaire's gross receipts for Food and Beverage Sales (FBS) exceeds the amount (MG) provided in 4.1 above, then the Concessionaire shall also pay to the City the difference between the percentage of gross (PG) amount and the amount provided in 4.1 above, no later than December 31, of each year during the initial term of this Agreement.

For each contract year, in the event that the amount equal to twenty (20%) percent (PG) of Concessionaire's gross receipts for Beach Equipment Rentals (BER) and Skin Care Product Sales (SCPS) exceeds the amount (MG) provide in 4.1 above, then the Concessionaire shall also pay to the City the difference between the PG amount and the amount provided in 4.1 above, no later than December 31, of each year during the initial term of this Agreement.

4.2.1

Percentage of Gross (vs.) MGO (PGO):

For each contract year, in the event that the amount equal to twenty percent (20%) (PGO) of Concessionaire's gross receipts for Optional Services exceeds the amount (MGO) provided in 4.1 above, then the Concessionaire shall also pay to the City the difference between the PGO amount and the amount provided in 4.1 above, no later than December 31, of each year during the initial term of this Agreement, provided however, the MG for the period from November 5, 2001 to March 4, 2002, will not be applicable and Concessionaire will be liable for payment of PG for said period. The parties agree and acknowledge that from and after November 5, 2002, no amount in excess of the MGO shall be due by Concessionaire in consideration of any and all adverse impact which Concessionaire's operations may have sustained as a result of the City's sand excavation project (the "Watersport PGO Waiver"). Concessionaire agrees and

acknowledges that the Watersport PGO Waiver shall be Concessionaire's sole remedy as to any alleged adverse impact sustained by the concession operations, and the City shall have no further liability or obligation to Concessionaire with regard to this matter. Notwithstanding the foregoing, the provisions of this Section 4.2.1 shall be reinstated, commencing with the next contract year, at such time as the City, in its sole judgment and reasonable discretion, has determined that adequate beach accretion has occurred so as to render the Watersport PGO invalid.

Notwithstanding the foregoing and as a result of the City's sand excavation from the beach adjacent to Lummus Park for the beach renourishment project at 30th Street, City and Concessionaire agree that any PGO amounts due on the MGO for contract years two (2) and three (3) shall be waived in their entirety. Furthermore, Concessionaire shall only be required to pay to the City sixty two and one half percent (62.5%) of the PGO on the MGO for contract year four (4). Concessionaire shall be required to pay to the City one hundred percent (100%) of the PGO on the MGO for contract year five (5).

The term "gross receipts" is understood to mean all income collected or accrued, derived by the Concessionaire under the privileges granted by this Agreement, excluding amounts of any Federal, State, or City sales tax, or other tax, governmental imposition, assessment, charge or expense of any kind, collected by the Concessionaire from customers and required by law to be remitted to the taxing or other governmental authority. Except as otherwise provided, with regard to a special event under Subsection 16.1 hereof in which Concessionaire is providing the food and beverage service at a Concession Area, "gross receipts" includes all income collected, accrued or derived by the Concessionaire from the sale of food, beverages and any other products sold by Concessionaire at such special event at such Concession Area. In the case of a special event under Subsection 16.1 hereof in which Concessionaire is not providing the food and beverage service at a Concession Area, any use fee or other moneys remitted by the City to the Concessionaire shall be excluded from the definition of the term "gross receipts". In the case of a special event under Subsection 16.1 hereof, and regardless of whether Concessionaire is or is not providing the food and beverage service at a Concession Area, if the City is not charging, assessing or collecting any special event permit fee or other charge or moneys in connection with such special event, all income collected, accrued or derived by the Concessionaire in connection with such special event shall be excluded from the definition of the term "gross receipts". In the case of a special event at a Concession Area under Subsection 16.1 hereof, if any income is collected, accrued or derived by the Concessionaire from the provision or sale of any goods or services, exclusive of food, beverage and beach equipment that Concessionaire is expressly authorized in Subsections 3.1 and 3.4 of this Agreement to provide or sell as part of its concession

hereunder, then the amount of any moneys which is paid, directly or indirectly, by Concessionaire to another person or entity to pay for all or any portion of the cost or price of any such goods or services or any part thereof (commonly known as a "pass-through") shall be deducted from the amount of "gross receipts".

4.3 Interest for Late Payment.

Any payment which Concessionaire is required to make to City which is not paid on or before the respective date provided for in this Agreement shall be subject to interest at the rate of twelve percent (12%) per annum, from the due date of payment until such time as payment is actually received by the City.

4.4 Sales and Use Tax.

It is also understood that the required Florida State Sales and Use Tax shall be added to Concessionaire's payments and forwarded to the City as part of said payments. It is the City's intent that it is to receive all payments due from Concessionaire as net of such Florida State Sales and Use Tax.

SECTION 5. MAINTENANCE AND EXAMINATION OF RECORDS.

Concessionaire shall maintain current, accurate, and complete financial records on an accrual basis of accounting related to its operations pursuant to this Agreement. Systems and procedures used to maintain these records shall include a system of internal controls and all accounting records shall be maintained in accordance with generally accepted accounting principles and shall be open to inspection and audit, but not photocopying, by the City Manager or his designee upon reasonable prior request and during normal business hours. Such records and accounts shall include a breakdown of gross receipts, expenses, and profit and loss statements. Concessionaire shall maintain accurate receipt-printing cash registers or a like alternative in all Concession Areas which will record and show the payment for every sale made or service provided in such Areas; and such other records shall be maintained as would be required by an independent CPA in order to audit a statement of annual gross receipts and profit and loss statement pursuant to generally accepted accounting principles.

A monthly report of gross receipts must be submitted to the City, through the Finance Department's Revenue Supervisor, to be received no later than thirty (30) days after the close of each month.

SECTION 6. INSPECTION AND AUDIT.

Concessionaire shall maintain its financial records pertaining to its operations for a period of three (3) years after the conclusion of any contract year and such records shall be open and available to the City Manager or his designee, as deemed necessary by the City Manager or his designee, but shall not be subject to photocopying. Concessionaire shall maintain all such records at its principal office, currently located at 420 Lincoln Road, Suite

265, Miami Beach, Florida, 33139, or, if moved to another location, all such records shall be relocated, at Concessionaire's expense, to a location in Miami Beach, within ten (10) days' written notice from the City.

The City Manager or his designee shall be entitled to audit, but not photocopy, Concessionaire's records pertaining to its operation as often as it deems reasonably necessary throughout the term of this Agreement, and three (3) times within the three (3) year period following termination of the Agreement, regardless of whether such termination results from the natural expiration of the term or for any other reason. The City shall be responsible for paying all costs associated with such audits, unless the audit(s) reveals a deficiency of five percent (5%) or more in Concessionaire's statement of gross receipts for any year or years audited, in which case the firm shall pay to the City, within thirty (30) days of the audit being deemed final (as specified below), the cost of the audit and a sum equal to the amount of the deficiency revealed by the audit, plus interest; provided, however, the audit shall not be deemed final until Concessionaire has received the audit and has had a reasonable opportunity to review the audit and discuss the audit with the City. These audits are in addition to periodic audits by the City of Resort Tax collections and payments, which are performed separately. Nothing contained within this Section shall preclude the City's audit rights for Resort Tax collection purposes.

Concessionaire shall submit at the end of each contract year, an annual statement of gross receipts, in a form consistent with generally accepted accounting principles. Additionally, such statement shall be accompanied by a report from an independent CPA firm which shall perform certain agreed upon procedures, as described in the attached Exhibit 6.

The parties acknowledge and agree that, in lieu of the aforesaid annual statement of gross receipts and report from an independent CPA firm, as required and set forth in the preceding paragraph, for contract years One, Two and Three (November 5, 2001 – November 4, 2004) of the Agreement, the City's Internal Auditor shall perform an audit of contract terms and gross receipts for each of said contract years, and the cost of such audits shall be reimbursed by the Concessionaire to the City, immediately upon written notice to Concessionaire from City, as follows:

- (i) Ten Thousand (\$10,000) Dollars for the City audit covering the period of November 5, 2001 through March 31, 2003; payable Five Thousand (\$5,000) Dollars upon execution of this Amended and Restated Agreement, and Five Thousand (\$5,000) Dollars on November 5, 2005.
- (ii) Ten Thousand (\$10,000) Dollars for the City audit covering the period of April 1, 2003-November 4, 2004. Said payment shall be made in full at the time the audit is completed and upon receipt of City Finance Department invoice for same by Concessionaire.

It is Concessionaire's intent to stay informed of comments and suggestions by the City regarding Concessionaire's performance under the Agreement. Within thirty (30) days after

the end of each contract year, Concessionaire and City may meet to review Concessionaire's performance under the Agreement for the previous contract year. At the meeting, Concessionaire and City may discuss quality, operational, maintenance and any other issues regarding Concessionaire's performance under the Agreement.

SECTION 7. TAXES, ASSESSMENTS, AND UTILITIES.

7.1 Concessionaire agrees to and shall pay before delinquency all taxes (including but not limited to resort taxes) and assessments of any kind assessed or levied upon Concessionaire by reason of this Agreement or by reason of the business or other activities of Concessionaire upon or in connection with the Concession Area(s). Concessionaire will have the right, at its own expense, to contest the amount or validity, in whole or in part, of any tax and/or assessment by appropriate proceedings diligently conducted in good faith. Concessionaire may refrain from paying a tax or assessment to the extent it is contesting the assessment or imposition of same in a manner that is in accordance with law; provided, however, if, as a result of such contest, additional delinquency charges become due, Concessionaire shall be responsible for such delinquency charges, in addition to payment of the contested tax and/or assessment if so ordered.

Concessionaire shall also pay for any fees imposed by law for licenses or permits for any business or activities of Concessionaire upon the Concession Area(s) under this Agreement.

Concessionaire shall pay before delinquency any and all charges for utilities used by, for, or on behalf of the operations contemplated herein (including, but not limited to, water, electricity, gas, heating, cooling, sewer, telephone, trash collection, etc.).

City acknowledges that Concessionaire requires an electrical outlet to operate its point of sale (POS) system. Concessionaire will use its best efforts to operate said POS equipment from an adjacent Ocean Drive hotel property. If distance does not permit, then Concessionaire will advise the City Manager or his designee, and the parties will use best efforts to seek placement of the POS system at the Offices of the Miami Design Preservation League, located at the 10th Street Auditorium. If unsuccessful, Concessionaire may then request from the City the location of the POS system within the City-owned (non - Miami Design Preservation League used portion of the) 10th Street facility, at Concessionaire's sole cost and expense, for as long as said facility is operational.

7.2 Procedure If Ad Valorem Taxes Assessed.

Notwithstanding Subsection 7.1 above, the parties agree that the operations contemplated herein are for public purposes and, therefore, no ad valorem taxes should be assessed by the Miami-Dade County Tax Appraiser. If,

however, said taxes are assessed, City and Concessionaire shall use reasonable efforts to address payment of same.

SECTION 8. EMPLOYEES AND INDEPENDENT CONTRACTORS.

- 8.1 In connection with the performance of its responsibilities hereunder, Concessionaire may hire its own employees and/or independent contractors, who will be employees and/or independent contractors of Concessionaire and not of the City. Concessionaire shall select the number, function, qualifications, compensation, including benefits (if any), and may, at its discretion and at any time, adjust or revise the terms and conditions relating to such employees and/or independent contractors.
- 8.2 Concessionaire and its employees and/or independent contractors shall wear identification badges and uniforms approved by the City during all hours of operation when such employee or independent contractor is acting within the scope of such employment or such independent contractor relationship. All employees and/or independent contractors shall observe all the graces of personal grooming. The Concessionaire shall hire people to work in its concession operation who are neat, clean, well groomed and shall comport themselves in a professional and courteous manner. The Concessionaire and any persons hired by same, shall never have been convicted of a felony. If Concessionaire materially fails to comply with this provision the City may send notice of default. The Concessionaire shall have an experienced manager or managers overseeing the concession operations at all times.

SECTION 9. HOURS OF OPERATION.

All Concession Areas and concession operations thereon shall be open every day of the year, weather or events of force majeure permitting, and shall be open no earlier than one (1) hour after sunrise daily, and close no later than one (1) hour before sunset daily. Sunrise and sunset shall be established on a daily basis by the National Weather Service. Any change in the hours of operation shall be at the City's sole option and discretion, and any request by Concessionaire for an increase or decrease in same shall be subject to the prior written approval of the City Manager or his designee.

Notwithstanding anything herein to the contrary, the City Manager or his designee, in his sole discretion, may allow Concessionaire to operate a concession at the North Shore Open Space Park Concession Area on an intermittent and/or reduced basis; provided, however, Concessionaire's exclusive right to operate a concession at the North Shore Open Space Park Concession Area and all Concession Areas as provided in this Agreement shall not be disturbed. During any time that Concessionaire is not operating a concession at the North Shore Open Space Park Concession Area, Concessionaire shall have no obligations under this Agreement regarding the North Shore Open Space Park Concession Area. If, during any time that Concessionaire is not operating a concession at the North Shore Open Space Park Concession Area, the City Manager or his designee

desires that a concession be operated at that Area, the City Manager or his designee shall so advise Concessionaire and Concessionaire shall promptly commence or re-commence, as applicable, operating a concession at that Area.

SECTION 10. MAINTENANCE.

10.1 The Concessionaire accepts the use of the Concession Area(s) provided in this Agreement in its "as is" condition. Concessionaire assumes sole responsibility and expense for maintenance of the Concession Area(s) and all facilities and equipment therein, and the dune area landward and adjacent thereto. This shall include daily removal of litter, garbage and debris; said removal to be the sole responsibility and expense of Concessionaire. Daily maintenance shall be accomplished 365 days per year. Concessionaire agrees, also at its sole cost and expense, to pay for all garbage disposal generated by its operations.

10.2 Garbage Receptacles and Fenced Storage Area.
With respect to litter, garbage and debris removal, the Concessionaire shall provide, at its sole cost and expense, receptacles within the confines of the Concession Area(s) and shall provide a sufficient number of these receptacles for its own use and for the use of the public. Disposal of the contents of said receptacles and removal of litter, garbage and debris within the Concession Area(s), shall be done on a daily basis, and shall be the sole responsibility of the Concessionaire. The Concessionaire shall be permitted, at its sole cost and expense, to utilize the dumpster area on the north side of the 10th Street Auditorium, but must provide for its disposal. By the Commencement Date, Concessionaire shall enter into an agreement with a trash hauler for disposal at the 10th Street dumpster facility and provide a copy of such agreement to the City. Any costs for removal of the contents of said trash receptacles by the City, because of the Concessionaire's failure to do the same, will be assessed upon, and become the responsibility of the Concessionaire. The dumping or disposal of any refuse, discards, trash or garbage, generated by, or as a result of the concession operations, into any of the Miami-Dade County trash receptacles, by the Concessionaire (including its staff and employees), shall be strictly prohibited. Determination of the "number" of receptacles shall at all times be within the City's sole discretion, and Concessionaire shall agree to be bound by same.

10.2.1 Concessionaire shall also be permitted to locate and maintain, including landscaping, at Concessionaire's sole cost and expense, a twenty five (25) foot by twenty five (25) foot fenced storage area adjacent to the dumpster area on the north side of the 10th Street Auditorium, in accordance with Exhibit 10.2.1, for umbrella and chair storage only. Said fenced storage area shall be approved by the City's Planning Department or, if deemed necessary by the City, by any other applicable authority.

10.3

Facilities/Equipment.

The Concessionaire must provide and maintain, at its own cost and expense, all facilities and equipment required to operate the concession. The Concessionaire shall maintain said facilities, equipment, and furnishings during the term of this Agreement at its sole cost and expense. In the event any of the aforesaid items are lost, stolen, or damaged, they shall be replaced or repaired at the sole cost and expense of the Concessionaire within fifteen (15) days of written notice from the City.

10.4

Orderly Operation.

The Concessionaire shall have a neat and orderly operation at all times and shall be solely responsible for the necessary housekeeping services to properly maintain the Concession Area(s) and all facilities incident thereto. There shall be no living quarters nor shall anyone be permitted to live within the facilities and/or Concession Area(s). The Concessionaire shall make available all facilities within the Concession Area(s) under its control for examination during hours of operation by the City Manager or his authorized representative.

10.5

No Dangerous Materials.

The Concessionaire agrees not to use or permit in the Concession Area(s) or facilities the storage and/or use of gasoline, fuel oils, diesel, illuminating oils, oil lamps, combustible powered electricity producing generators, turpentine, benzene, naphtha, propane, natural gas, or other similar substances, combustible materials, or explosives of any kind, or any substance or thing prohibited in the standard policies of fire insurance companies in the State of Florida. Any such substances or materials found within the Concession Area(s) shall be immediately removed. This subsection shall not apply to any substances permitted by the City's Rules and Regulations for Beachfront Concession Operations, in effect on the date of approval of this Agreement by the Mayor and City Commission; provided such substances are used or stored in connection with concession operations, and are not (at anytime) otherwise prohibited by County, State or Federal law.

Notwithstanding any contrary provisions of this Agreement, Concessionaire, after the Commencement Date, shall indemnify and hold City harmless from any loss, damage, cost, or expense of the City, including, without limitation, reasonable attorney's fees, incurred as a result of, arising from, or connected with the placement by Concessionaire, after the Commencement Date, but during the term of this Agreement, of any "hazardous substance" or "petroleum products" on, under, in or upon the Concession Areas as those terms are defined by applicable Federal and State Statute, or any environmental rules and environmental regulations promulgated thereunder; provided, however, Concessionaire shall have no liability in the event of the willful misconduct or gross negligence of the City, its agents, servants or employees. The provisions of this Subsection 10.5 shall survive the

termination or earlier expiration of this Agreement.

10.6 Security.

The Concessionaire shall be responsible for and provide reasonable security measures which may be required to protect the Concession Area(s) and any of the equipment, materials and facilities thereon. Under no circumstances shall the City be responsible for any stolen or damaged equipment, materials and facilities, nor shall City be responsible for any stolen or damaged personal property of Concessionaire's patrons, guests, invitees, and/or other third parties.

10.7 Vehicles on the Beach.

Concessionaire's vehicles shall include (i) any "on-road vehicle" and/or trailers licensed in accordance with applicable County, State and Federal law, to operate on public streets and roadways and shall also include any (ii) non "on-road" vehicles such as golf carts and all terrain vehicles ("ATV"s) (both (i) and (ii) shall be referred collectively herein as "vehicles"). Concessionaire's vehicles shall only be allowed on the beachfront for purposes of supplying the concession operations, and to remove equipment at the close of operations each day, and must be removed from the beachfront immediately thereafter. Anyone operating a vehicle for or on behalf of Concessionaire must have a current valid Florida Driver's License. Said supplying and removal operations shall only be permitted during regular hours of operation, and shall be completed safely and expeditiously. No vehicular traffic will be permitted on the beach after sunset or prior to sunrise. Access to the beach shall only be permitted via specifically designated dune crossovers authorized for such use and nearest to the concession operation.

Vehicles operated on the beachfront shall not exceed 5 M.P.H. and shall only operate in the immediate vicinity of the concession or to-and-from the nearest predetermined and assigned access ramp. After transporting equipment to a Concession Area, the vehicles shall be removed from the beachfront area and parked in a legally authorized location. Driving on the beachfront area shall be kept to a minimum. No vehicular traffic will be permitted on the beach, at any time or for any purpose, other than as stated herein. Driving from one Concession Area, concession facility and/or concession location to another to service, supervise, or for any other reason, is prohibited. Concessionaire must exit to the street as provided above to access other locations. All vehicles operated on the beach must have a tire-to-ground pressure of ten pounds per square inch (10 p.s.i) or less.

Eighteen-inch (18") high cones, orange in color, shall be placed in front of, and at the rear of the vehicle when parked. Vehicle operator must inspect the vehicles perimeter and surrounding area, prior to turning the vehicles ignition switch, to assure a clear path of egress and only proceed with extreme

caution. Vehicles must always remain on the "hard-packed" sand area. Driving or parking on any "soft-sand" area is prohibited.

All vehicles must have signage, on each side, with the name of the concession operator in 4" high letters on a contrasting background.

A total of six (6) vehicles, (which may include such combination of the type of vehicles specified in (i) and (ii) above as Concessionaire may deem necessary but which total number of vehicles shall in no event exceed six (6)) are herein permitted, and shall be properly marked and identified as in accordance with the applicable guidelines for vehicles provided above. Provided, however, that in order to contain vehicular traffic on the beach to a minimum, the City Manager or his designee, must approve any additional "on-road" and/or non "on-road" vehicles to be used by Concessionaire prior to such use.

10.8

Inspection.

The Concessionaire agrees that the Concession Area(s) and all facilities, equipment, and operations thereon may be inspected at any time during hours of operation by the City Manager or his designee, or by any other Municipal, County, State officer, or agency having responsibilities for inspections of such operations. The Concessionaire hereby waives all claims against the City for compensation for loss or damage sustained by reason of any interference (which interference, if by the City, must be reasonable) with the concession operation by any public agency or official in enforcing their duties or any laws or ordinances. Any such interference (which interference, if by the City, must be reasonable) shall not relieve the Concessionaire from any obligation hereunder.

SECTION 11. INSURANCE.

Concessionaire shall maintain, at its sole cost and expense, the following types of insurance coverage at all times throughout the term of this Agreement.

- a. Comprehensive General Liability:
 - (i) except as specifically provided for in a(ii) below, comprehensive general liability in the minimum amount of Two Million Dollars (\$2,000,000) per occurrence for bodily injury and property damage. This policy must also contain coverage for premises operations, products and contractual liability.
 - (ii) for all watersport equipment rental, as defined in Section 3.4, comprehensive general liability in the minimum amount of One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage. This policy must also contain coverage for premises

operations, products and contractual liability.

- b. Workers Compensation Insurance shall be required in accordance with the Laws of the State of Florida.
- c. Automobile Insurance shall be provided covering all owned, leased, and hired vehicles and non-ownership liability for not less than the following limits:

Bodily Injury	\$1,000,000 per person
Bodily Injury	\$1,000,000 per accident
Property Damage	\$1,000,000 per accident

The policies of insurance referred to above shall not be subject to cancellation or changing coverage except upon at least thirty (30) days prior written notice to the City, and then only subject to the prior written approval of the City Manager or his designee. Prior to the Commencement Date of this Agreement, Concessionaire shall provide City with a Certificate of Insurance for each such policy. ALL POLICIES SHALL NAME THE CITY OF MIAMI BEACH FLORIDA AS AN ADDITIONAL NAMED INSURED. All such policies shall be obtained from companies authorized to do business in the State of Florida with an A.M. Best's Insurance Guide (latest edition) rating acceptable to the City's Risk Manager, and any replacement or substitute company shall also be subject to the approval of the City's Risk Manager. Should Concessionaire fail to obtain, maintain or renew the policies of insurance referred to above, in the required amounts, the City may, at its sole discretion, obtain such insurance, and any sums expended by City in obtaining said insurance, shall be repaid by Concessionaire to City, plus ten percent (10%) of the amount of premiums paid to compensate City for its administrative costs. If Concessionaire fails to repay City's expenditures within fifteen (15) days of demand, the total sum owed shall accrue interest at the rate of twelve percent (12%) until paid, and such failure shall be deemed an event of default hereunder.

SECTION 12. INDEMNITY.

- 12.1 In consideration of a separate and specific consideration of \$10.00 and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Concessionaire shall indemnify, hold harmless and defend the City, its agents, servants and employees from and against any claim, demand or cause of action of whatsoever kind or nature arising out of error, omission, or negligent act of Concessionaire, its subconcessionaire(s), agents, servants or employees in the performance of services under this Agreement.
- 12.2 In addition, in consideration of a separate and specific consideration of \$10.00 and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Concessionaire shall indemnify, hold

harmless and defend the City, its agents, servants and employees from and against any claim, demand or cause of action of whatever kind or nature arising out of any misconduct of Concessionaire not included in the paragraph in the subsection above and for which the City, its agents, servants or employees are alleged to be liable.

12.3 Subsections 12.1 and 12.2 shall survive the termination or expiration of this Agreement. Subsections 12.1 and 12.2 shall not apply, however, to any such liability, that arises as a result of the willful misconduct or gross negligence of the City, its agents, servants or employees.

12.4 Subrogation.
The terms of insurance policies referred to in Section 11 shall preclude subrogation claims against Concessionaire, the City and their respective officers, employees and agents.

12.5 Force Majeure.
Neither party shall be obligated to perform hereunder and neither party shall be deemed to be in default if performance is prevented by:

- a. fire which renders at least thirty percent (30%) of the Concessionaire's cumulative facilities and equipment unusable and which is not caused by negligence of Concessionaire;
- b. earthquake; hurricane; flood; act of God; direct act of terrorism; or civil commotion occurring on the Concession Area(s); or
- c. any law, ordinance, rule, regulation or order of any public or military authority stemming from the existence of economic or energy controls, hostilities, or war.

The parties hereto acknowledge that Concessionaire's obligations and benefits hereunder may be negatively affected by an event of Force Majeure. If an event of Force Majeure occurs during a contract year, and provided further that Concessionaire's minimum guarantee payment(s) to the City for that contract year is greater than the applicable percentage payment, then the City Manager or his designee, in his sole discretion, may extend the Term of this Agreement for a reasonable period of time; provided, however, such extension shall take effect only if Concessionaire agrees to such extension.

12.6 Labor Dispute.
In the event of a labor dispute which results in a strike, picket or boycott affecting the Concession Area(s) or operation described in this Agreement, Concessionaire shall not thereby be deemed to be in default or to have breached any part of this Agreement, unless such dispute shall have been

caused by illegal labor practices or violations by Concessionaire of applicable collective bargaining agreements and there has been a final determination of such fact which is not cured by Concessionaire within thirty (30) days.

12.7

Waiver of Loss from Hazards.

The Concessionaire hereby expressly waives all claims against the City for loss or damage sustained by the Concessionaire resulting from fire, water, natural disasters/acts of God (e.g. hurricane, tornado, etc.), civil commotion, riot, or any other Force Majeure contemplated in Subsection 12.5 and Labor Dispute in Subsection 12.6 above, and the Concessionaire hereby expressly waives all rights, claims, and demands against the City and forever releases and discharges the City of Miami Beach, Florida, from all demands, claims, actions and causes of action arising from any of the aforesaid causes.

SECTION 13. DEFAULT AND TERMINATION.

Subsections 13.1 through 13.3 shall constitute events of default under this Agreement. An event of default by Concessionaire shall entitle City to exercise any and all remedies described as City's remedies under this Agreement, including but not limited to those set forth in Subsection 13.4 and Section 14. An event of default by City shall entitle Concessionaire to exercise any and all remedies described as Concessionaire's remedies under this Agreement, including but not limited to those set forth in Subsection 13.5.

13.1

Bankruptcy.

If either the City or Concessionaire shall be adjudged bankrupt or insolvent, or if any receiver or trustee of all or any part of the business property of either party shall be appointed, or if any receiver of all or any part of the business property shall be appointed and shall not be discharged within sixty (60) days after appointment, or if either party shall make an assignment of its property for the benefit of creditors, or shall file a voluntary petition in bankruptcy, or insolvency, or shall apply for reorganization or arrangement with its creditors under the bankruptcy or insolvency laws now in force or hereinafter enacted, Federal, State, or otherwise, or if such petitions shall be filed against either party and shall not be dismissed within sixty (60) days after such filing, then the other party may immediately, or at any time thereafter, and without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to it for breach of contract.

13.2

Default in Payment.

In the event Concessionaire fails to submit any payment within five (5) days of its due date, there shall be a late charge of \$50.00 per day for such late payment, in addition to interest at the highest rate allowable by law (currently 12% per annum). If any payment and accumulated penalties are not received within fifteen (15) days after the payment due date, and such failure continues three (3) days after written notice thereof, then the City may,

without further demand or notice, terminate this Concession Agreement without being prejudiced as to any remedies which may be available to it for breach of contract; and may begin procedures to collect the Performance Bond required in Section 14 herein.

13.3 Non-Monetary Default.

In the event that Concessionaire or the City fails to perform or observe any of the covenants, terms or provisions under this Agreement, and such failure continues thirty (30) days after written notice thereof from the other party hereto, such non-defaulting party may immediately or at any time thereafter, and without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to it for breach of contract. In the event that a default is not reasonably susceptible to being cured within such period, the defaulting party shall not be considered in default if it shall, within such period, commence with due diligence and dispatch to cure such default and thereafter completes with dispatch and due diligence the curing of such default, but in no event shall such extended cure period exceed ninety (90) days from the date of written notice thereof. In the event Concessionaire cures any default pursuant to this subsection, it shall promptly provide City with written notice of same.

13.4 City's Remedies for Concessionaire's Default.

If any of the events of default, as set forth in this Section, shall occur, the City may, after notice (if required) and the expiration of cure periods, as provided above, at its sole option and discretion, institute such proceedings as in its opinion are necessary to cure such defaults and to compensate City for damages resulting from such defaults, including but not limited to the right to give to Concessionaire a notice of termination of this Agreement. If such notice is given, the term of this Agreement shall terminate upon the date specified in such notice from City to Concessionaire. On the date so specified, Concessionaire shall then quit and surrender the Concession Area(s) to City pursuant to the provisions of Subsection 13.7. Upon the termination of this Agreement, all rights and interest of Concessionaire in and to the Concession Area(s) and to this Agreement, and every part thereof, shall cease and terminate and City may, in addition to any other rights and remedies it may have, retain all sums paid to it by Concessionaire under this Agreement, including but not limited to, beginning procedures to collect the Performance Bond in Section 14 herein. In addition to the rights set forth above, City shall have the rights to pursue any and all of the following:

- a. the right to injunction or other similar relief available to it under Florida law against Concessionaire; and or
- b. the right to maintain any and all actions at law or suits in equity or other proper proceedings to obtain damages resulting from Concessionaire's default.

13.5 If an event of default, as set forth in this Section, by the City shall occur, the Concessionaire may, after notice (if required) and the expiration of the cure periods, as provided above, at its sole option and discretion, terminate this Agreement upon written notice to the City and/or sue for damages. Said termination shall become effective upon receipt of a written notice of termination by the City, but in no event shall Concessionaire specify a termination date that is less than sixty (60) days from the date of the written termination notice. On the date specified in the notice, Concessionaire shall quit and surrender the Concession Area(s) to City pursuant to the provisions of Subsection 13.7.

13.6 Termination for Convenience/Partial Termination.

13.6.1 Concessionaire acknowledges that the City intends to develop a schedule of capital improvements for the North Shore Open Space Park Concession Area which may entail a closure of all or a portion of the Park, at the City Commission's sole discretion. In the event that the City closes down the North Shore Open Space Park for the purpose of undertaking a capital improvement plan thereon, then the parties agree that that portion of the Agreement referencing North Shore Open Space Park shall be partially terminated for convenience, without cause and without penalty to either party, and only as to that portion of the Concession Area which has been closed. Such a termination shall become effective upon sixty (60) days prior written notice to Concessionaire.

13.6.2 In the event of termination or partial termination by City of the Agreement pursuant to this Subsection, Concessionaire herein acknowledges and agrees that it shall not have any claim, demand, or cause of action of whatsoever kind or nature, against the City, its agents, servants and employees (including, but not limited to, claims for interference in business or damages for interruption of services or interference in its concession operations for beach equipment rental, beach sundries sales, food and beverage sale/service, and watersport equipment rental).

13.7 Surrender of Concession Areas.

At the expiration of this Agreement, or earlier termination in accordance with the terms of this Agreement, Concessionaire shall surrender the Concession Area(s) in the same condition as the Concession Area(s) were prior to the commencement of this Agreement, reasonable wear and tear excepted (including any beach erosion not directly caused by Concessionaire and/or its operation). Concessionaire shall remove all its facilities, equipment, fixtures, personal property, etc. upon forty-eight (48) hours written notice from the City Manager or his designee unless a longer time period is agreed to by the City. Concessionaire's obligation to observe or perform this

covenant shall survive the expiration or other termination of this Agreement. Continued occupancy of the Concession Area(s) after termination of the Agreement shall constitute trespass by the Concessionaire, and may be prosecuted as such. In addition, the Concessionaire shall pay to the City one thousand dollars (\$1,000) per day as liquidated damages for such trespass and holding over.

SECTION 14. PERFORMANCE BOND OR ALTERNATE SECURITY.

Concessionaire shall, on or before the Commencement Date of this Agreement, furnish to the City Manager or his designee a Performance Bond in the penal sum as stated below for the payment of which Concessionaire shall bind itself for the faithful performance of the terms and conditions of this Agreement. A Performance Bond in the amount of Two Hundred Thousand Dollars (\$200,000.00) shall be required and be in faithful observance of this Agreement. A cash deposit, irrevocable letter of credit, or certificate of deposit may also suffice, as determined by the City Manager or his designee in his reasonable discretion. The form of the Performance Bond or letter of credit shall be as required by the City Manager or his designee. In the event that a Certificate of Deposit is approved, it shall be a Two Hundred Thousand Dollar (\$200,000.00) one-year Certificate of Deposit in favor of the City, which shall be automatically renewed, the original of which shall be held by City. Concessionaire shall be so required to maintain said Performance Bond or alternate security, as accepted by City Manager or his designee, in full force and effect throughout the term of this Agreement; provided, however, in the event that any of Concessionaire's equipment in connection with this Agreement is acquired by a lease, then, if requested in writing from Concessionaire by the City Manager or his designee, in his discretion, such Performance Bond or alternate security shall be in the total amount of \$300,000 commencing with the fourth contract year and \$400,000 commencing with the fifth contract year; provided, further, that, in lieu of such increased Performance Bond, if requested in writing by the City Manager or his designee, in his discretion, Concessionaire shall file a UCC-1 financing statement providing to the City a security interest in such leased equipment. Concessionaire shall have an affirmative duty to notify the City, in writing, in the event said Performance Bond or alternate security lapses or otherwise expires. All interest that accrues in connection with any financial instrument or sum of money referenced above shall be the property of Concessionaire, except in an event of default, in which case the City shall be entitled to all interest that accrues after the date of default.

SECTION 15. ASSIGNMENT.

Except as otherwise provided in this Subsection, Concessionaire shall not assign; sublease; grant any concession or license (other than the subconcession for food and beverages approved with Monty's LLC herein, or as otherwise permitted pursuant to the procedures set forth in Section 3.2 hereof); permit the use of by any other person other than Concessionaire; or otherwise transfer all or any portion of this Agreement and/or of the Concession Area(s) (all of the forgoing are herein after referred to collectively as "transfers"), without the prior written consent of the City, which consent shall not be unreasonably withheld.

If there is a change in control of Concessionaire, then any such change in control shall constitute a "transfer" for purposes of this Agreement and shall be approved by the City Commission prior to consummation of such change in control. "Change in control", for purposes hereof, shall mean a change of the ownership, directly or indirectly, of greater than thirty-three and four tenths percent (33.4%) of the voting or ownership interest or right to profits in such Concessionaire, by means of one or more transfers, sales, mergers, consolidations, dissolutions or otherwise; provided that the foregoing shall not be deemed to include (i) a pledge or collateral assignment of the profits of Concessionaire in connection with any financing, provided such pledge or collateral assignment is subordinate to the rights of the City to the fees payable to the City pursuant to Section 4 hereof; (ii) any transfer to other owners of Concessionaire or to trusts the beneficiaries of which are any owner(s) of Concessionaire or member(s) of their immediate family; or (iii) a change in the ownership of Concessionaire through a registered public offering of shares in Concessionaire ((i), (ii) and (iii) above collectively are referred to herein as the "Transfer Exclusions"). Except for the Transfer Exclusions, any change of the ownership, directly or indirectly, of thirty-three and four tenths percent (33.4%) or less of the voting or ownership interest or right to profits in such Concessionaire (a "Minor Change"), by means of one or more transfers, sales, mergers, consolidations, dissolutions or otherwise, shall be subject to the approval of the City Manager or his designee.

Concessionaire shall notify the City of any proposed transfer, and shall notify the City Manager or his designee of any proposed Minor Change, prior to consummation of same and the City or the City Manager or his designee, as applicable, shall respond within thirty (30) days. In the event that any such transfer or Minor Change is approved, the transferee shall agree to be bound by all the covenants of this Agreement required of the transferor hereunder. Any transfer or Minor Change made without complying with this Section shall be null, void, and of no effect and shall constitute an act of default under this Agreement. Notwithstanding any such consent, or any permitted transfer or Minor Change under any provision of this Section, unless expressly released by the City, Concessionaire shall remain jointly and severally liable (along with each approved transferee, who shall automatically become liable for all obligations of the transferor hereunder with respect to that portion of the Agreement so transferred), and the City shall be permitted to enforce the provisions of this Agreement directly against Concessionaire or any transferee of the Concessionaire without proceeding in any way against any other person.

SECTION 16. SPECIAL EVENTS / SPONSORSHIPS.

- 16.1 Concessionaire's proposed uses, as defined in Section 3 herein, do not contemplate the production, promotion or sponsorship by the Concessionaire of special events in any of the Concession Areas. In the event Concessionaire does produce, promote or sponsor a special event in the City, other than those provided for in this Agreement, it shall abide by the City's Special Events Permit Requirements and Guidelines, as same may be amended from time to time. For any use, other than those provided for in this Agreement, a special events permit may be required and shall be obtained

through the City's Office of Arts, Culture and Entertainment. The City Manager's authorization must be obtained for any such special event.

The City Administration shall evaluate requests for special events permits on a case by case basis, in accordance with the City's Special Event Permit Requirements and Guidelines, as same may be amended from time to time. In the event that a special event and/or film permit is requested by an entity, other than the Concessionaire, and the proposed special event and/or film is scheduled to occur within the Concession Area(s) and would cause the operations within that particular Area(s) to cease, wholly or partly, and provided Concessionaire is not in default under the Agreement at the time of the request, the Concessionaire agrees to cooperate with the City and the special event permit applicant to allow use of the Concession Area(s) during the period of the special event, including set-up and break-down time. City agrees that, to the extent the special event permittee provides food and beverage service at the special event and does not utilize the Concessionaire for said service, the special event permittee will be required to remit twenty percent (20%) of the gross revenues generated at the event to the City. The City agrees to remit thirty percent (30%) of said remittance to the Concessionaire as a use fee in consideration of the special event permittee's use of the Concession Area(s).

16.2

City Special Events.

Notwithstanding Subsection 16.1 above, and in the event that the City, at its sole discretion, deems that it would be in the best interest of the City, the City reserves the right to displace the Concessionaire for City produced special events and/or City produced productions. In such cases, the City may request that the Concessionaire cease and desist operations during the term of, and in the area of the special event and/or production, and the Concessionaire shall cease and desist during said term. If the Concessionaire is not required to close, or chooses to remain open without interference to the special event and/or production, Concessionaire agrees to cooperate with the City. If the Concessionaire is allowed to remain open during special events and/or productions, the Concessionaire may be allowed to have in operation its normal daily complement of equipment and staff. "Normal" shall be defined as equipment and staff, approved by the City, that the Concessionaire has available for the public on a normal day, 365 days per year. Such equipment or staff shall not be increased or altered during special events and/or productions without the prior written permission of the City Manager or his designee. To the extent that the normal daily complement of equipment and staff is displaced by the special event and/or production, the Concessionaire may reallocate such displaced equipment and staff on a pro-rata basis within the Concession Area(s) not being utilized by the special event.

16.3 Notwithstanding anything to the contrary, if a special event occurs in all or any portion of any Concession Area(s), Concessionaire shall not be liable for any charge, fee or other expense, governmental or otherwise, in connection with such special event. To the extent the preceding sentence conflicts with the City's Rules and Regulations for Beachfront Concession Operations or conflicts with any other City rule, law, regulation, charter or code provision, this Agreement governs.

16.4 Sponsorships.

The City reserves unto itself all present and future rights to negotiate all forms of endorsement and/or sponsorship agreements based on the marketing value of any City trademark, property, brand, logo and/or reputation. Any and all benefits derived from an endorsement and/or sponsorship agreement based on the marketing value of a City trademark property, brand, logo and/or reputation, shall belong exclusively to the City.

Concessionaire shall be specifically prohibited from entering into, or otherwise creating, sponsorships and/or endorsements with third parties which are based solely or in any part on the marketing value of a City trademark, property, brand, logo and/or reputation.

The prohibition on Concessionaire entering into such sponsorship and/or endorsement agreements, as are defined in this subsection 16.1, shall not be interpreted to include nor prohibit the Concessionaire's right to sell, rent, or use, exclusively, any particular brand or product that would be permitted for use or sale pursuant to this Agreement. Moreover, the City will not limit Concessionaire's ability to negotiate a reduced rate for purchase, from any vendor, whose product(s) Concessionaire uses or offers for sale or rent pursuant to this Agreement.

SECTION 17. NO IMPROPER USE.

The Concessionaire will not use, nor suffer or permit any person to use in any manner whatsoever, the Concession Area(s) or facilities for any improper, immoral or offensive purpose, or for any purpose in violation of any Federal, State, County, or Municipal ordinance, rule, order or regulation, or of any governmental rule or regulation now in effect or hereafter enacted or adopted. The Concessionaire will protect, indemnify, and forever save and keep harmless the City, its agents, employees and contractors from and against damage, penalty, fine, judgment, expense or charge suffered, imposed, assessed or incurred for any violation, or breach of any law, ordinance, rule, order or regulation occasioned by any act, neglect or omission of the Concessionaire, Subconcessionaire, or any employee or agent regarding the Concession. In the event of any violation by the Concessionaire or if the City or its authorized representative shall deem any conduct on the part of the Concessionaire to be objectionable or improper, the City shall have the right to suspend the operation of the concession should the Concessionaire fail to correct any such violation, conduct, or practice to the satisfaction of the City within twenty-four (24) hours

after receiving written notice of the nature and extent of such violation, conduct, or practice, such suspension to continue until the violation is cured. The Concessionaire further agrees not to commence operation during the suspension until the violation has been corrected to the satisfaction of the City.

SECTION 18. PRICE SCHEDULES.

Concessionaire agrees that prices charged for beach equipment rentals, sale of food and beverage service, sale of beach related sundries, and watersport equipment rentals will be consistent with the price schedule(s) herein submitted by the Concessionaire and approved by the City and incorporated herein as exhibits to this Agreement. All subsequent price approvals and changes must be approved in writing by the City Manager or his designee. Prices shall be reasonably consistent with those charged for similar items and services in the general vicinity. The City shall have the final right of approval for all such prices and changes, but said right shall not be arbitrarily or unreasonably exercised. The Concessionaire agrees to refrain from the sale or rental of any item identified as prohibited by the City and to sell or rent only those items approved by the City. The Concessionaire agrees to maintain an adequate supply necessary to accommodate beach patrons.

SECTION 19. NOTICES.

All notices from the City to the Concessionaire shall be deemed duly served upon receipt, if mailed by registered or certified mail with a return receipt to the Concessionaire at the following address:

Boucher Brothers Miami Beach LLC
420 Lincoln Road, Suite 265
Miami Beach, Florida 33139

With copies to:

Alexander I. Tachmes, Esq.
Alexander I. Tachmes, P.A.
Two South Biscayne Boulevard
One Biscayne Tower, Suite 2475
Miami, Florida 33131

Abigail C. Watts-FitzGerald
Hunton & Williams
1111 Brickell Avenue, Suite 2500
Miami, Florida 33131

All notices from the Concessionaire to the City shall be deemed duly served upon receipt, if mailed by registered or certified mail return receipt requested to the City of Miami Beach at the following addresses:

City Manager
City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL 33139

With copy to:

City Attorney
City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL 33139

The Concessionaire and the City may change the above mailing address at any time upon giving the other party written notification. All notices under this Concession Agreement must be in writing.

SECTION 20. LAWS.

20.1 Compliance.

Concessionaire shall comply with all applicable City, County, State, and Federal ordinances, statutes, rules and regulations, including but not limited to all applicable environmental City, County, State, and Federal ordinances, statutes, rules and regulations, subject to the provisions of Subsection 10.5 hereof.

20.2 Governing Law.

INTENTIONALLY OMITTED.

20.3 Equal Employment Opportunity.

Neither Concessionaire nor any affiliate of Concessionaire performing services hereunder, or pursuant hereto, will discriminate against any employee or applicant for employment because of race, creed, sex, color, national origin, sexual orientation, and disability, as defined in Title I of ADA. Concessionaire will take affirmative steps to utilize minorities and females in the work force and in correlative business enterprises.

20.4 No Discrimination.

The Concessionaire agrees that there shall be no discrimination as to race, sex, sexual orientation, color, creed, national origin, familial status, religion or handicap, in its employment practice or in the operations referred to by this Concession Agreement; and further, there shall be no discrimination regarding any use, service, maintenance, or operation within the Concession Area(s). All services offered on the beach shall be made available to the public, subject to the right of the Concessionaire and the City to establish and enforce rules and regulations to provide for the safety, orderly operation and security of the facilities.

- 20.4.1 Pursuant to Sections 62-90 and 62-91, of Chapter 62, of the Miami Beach City Code entitled "Human Relations", Concessionaire, by executing this Agreement, certifies that it does not discriminate in its membership or policies based on race, color, national origin, religion, sex, sexual orientation, familial status or handicap.

SECTION 21. MISCELLANEOUS.

- 21.1 No Partnership.
Nothing contained in this Agreement shall constitute or be construed to be or create a partnership or joint venture between the City and Concessionaire.
- 21.2 Modifications.
This Agreement cannot be changed or modified except by agreement in writing executed by all parties hereto. Concessionaire acknowledges that no modification to this Agreement may be agreed to by the City unless approved by the Mayor and City Commission except where such authority has been expressly provided herein to the City Manager or his designee.
- 21.3 Complete Agreement.
This Agreement, together with all exhibits incorporated hereto, constitutes all the understandings and agreements of whatsoever nature or kind existing between the parties with respect to Concessionaire's operations, as contemplated herein.
- 21.4 Headings.
The section, subsection and paragraph headings contained herein are for convenience of reference only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement.
- 21.5 Binding Effect.
This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- 21.6 Clauses.
The illegality or invalidity of any term or any clause of this Agreement shall not affect the validity of the remainder of the Agreement, and the Agreement shall remain in full force and effect as if such illegal or invalid term or clause were not contained herein unless the elimination of such provision detrimentally reduces the consideration that either party is to receive under this Agreement or materially affects the continuing operation of this Agreement.
- 21.7 Severability.
If any provision of this Agreement or any portion of such provision or the application thereof to any person or circumstance shall be held to be invalid

or unenforceable, or shall become a violation of any local, State, or Federal laws, then the same as so applied shall no longer be a part of this Agreement but the remainder of the Agreement, such provisions and the application thereof to other persons or circumstances, shall not be affected thereby and this Agreement as so modified shall.

21.8 Right of Entry.

The City, at the direction of the City Manager, shall at all times during hours of operation, have the right to enter into and upon any and all parts of the Concession Area(s) for the purposes of examining the same for any reason relating to the obligations of parties to this Agreement.

21.9 Not a Lease.

It is expressly understood and agreed that no part, parcel, building, facility, equipment or space is leased to the Concessionaire, that it is a concessionaire and not a lessee; that the Concessionaire's right to operate the concession shall continue only so long as this Agreement remains in effect.

21.10 Signage.

Concessionaire shall provide, at its sole cost and expense, any required signs at its concessions. All advertising, signage and postings shall be approved by the City, and shall be in accordance with all applicable Municipal, County, State and Federal laws and regulations. Any signage posted by Concessionaire on its facilities and equipment shall be subject to the prior approval of the City as to size, shape and placement of same.

21.11 Use of Beach.

The beach is for the use and enjoyment of the public, for recreation and other public purposes and the public's right to such use shall not be infringed upon by any activity of the Concessionaire. Upon execution of this Agreement, Concessionaire acknowledges that all of the beaches are public and as such concession operations must not restrict, or appear to restrict, access to the general public, or in any way limit the public nature or ambiance of the beachfront. The Concessionaire will conduct its operations so as to maintain a reasonably quiet and tranquil environment for the adjacent area, and make no public disturbances.

21.12 Conflict of Interest.

Concessionaire shall perform its services under this Agreement and conduct the concession operations contemplated herein, in a manner so as to show no preference for other concession operations/facilities (e.g. particularly concession operations behind private property along the City's beachfront) owned, operated, managed, or otherwise controlled by Concessionaire with regard to its responsibilities pursuant to this Concession Agreement.

- 21.13 Reasonableness.
Notwithstanding anything to the contrary in this Agreement, including but not limited to references to "sole option" or "sole discretion" or words of similar meaning, in each instance in which the approval or consent or other action of the City Commission or the City Manager or his designee is allowed or required in this Agreement, such approval, consent or other action shall not be unreasonably withheld, conditioned or delayed.
- 21.14 Procedure for Approvals and/or Consents.
In each instance in which the approval or consent of the City Manager or his designee is allowed or required in this Agreement, it is acknowledged that such authority has been expressly provided herein to the City Manager or his designee by the Mayor and City Commission of the City. In each instance in which the approval or consent of the City Manager or his designee is allowed or required in this Agreement, Concessionaire shall send to the City Manager a written request for approval or consent (the "Approval Request"). The City Manager or his designee shall have up to sixty (60) days from the date of Approval Request to provide written notice to Concessionaire approving of, consenting to or disapproving of the request. However, the City Manager or his designee's failure to consider such request within this time provided shall not be deemed a waiver, nor shall Concessionaire assume that the request is automatically approved and consented to. The Subsection shall not apply to approvals required herein by the Mayor and City Commission.
- 21.15 No Waiver.
No waiver of any covenant or condition of this Agreement by either party shall be deemed to imply or constitute a waiver in the future of the same covenant or condition or of any other covenant or condition of this Agreement.
- 21.16 No Third Party Beneficiary.
Nothing in this Agreement shall confer upon any person or entity, including, but not limited to subconcessionaires, other than the parties hereto and their respective successors and permitted assigns, any rights or remedies by reason of this Agreement.

SECTION 22. LIMITATION OF LIABILITY.

The City desires to enter into this Agreement placing the operation and management of the Concession Area(s) in the hands of a private management entity only if so doing the City can place a limit on its liability for any cause of action for breach of this Agreement, so that its liability for any such breach never exceeds the sum of \$100,000.00. Concessionaire hereby expresses its willingness to enter into this Agreement with a \$100,000.00 limitation on recovery for any action for breach of contract. Accordingly, and in consideration of the separate consideration of \$100,000.00, the receipt of which is hereby acknowledged, the City shall not be liable to Concessionaire for damages to Concessionaire in an amount in

excess of \$100,000.00, for any action for breach of contract arising out of the performance or non-performance of any obligations imposed upon the City by this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of limitation placed upon the City's liability as set forth in Florida Statutes, Section 768.28.

SECTION 23. VENUE.

This Agreement shall be deemed to have been made and shall be construed and interpreted in accordance with the laws of the State of Florida. This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any and all the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida. **CITY AND CONCESSIONAIRE HEREBY KNOWINGLY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING THAT CITY AND CONCESSIONAIRE MAY HEREIN AFTER INSTITUTE AGAINST EACH OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE CONCESSION AREA(S).**

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused their names to be signed and their seals to be affixed, all as of the day and year first above written, indicating their agreement.

Attest:

CITY OF MIAMI BEACH, FLORIDA

CITY CLERK

MAYOR

Witness:

**BOUCHER BROTHERS
MIAMI BEACH LLC**

Signature

Signature

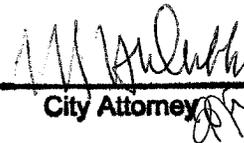
Print Name

Name and Title of Signatory

Signature

Print Name

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**



City Attorney

5-6-05
Date

EXHIBIT 1.2

FINANCIAL TERMS APPLICABLE TO RENEWAL TERM

1. With regard to the equipment, as same is defined in Exhibit 3.1.3 (i.e. chairs, umbrellas, sun canopies, storage/work facilities, storage, and food and beverage trailers), contemplated to be used by Concessionaire during the renewal term, Concessionaire shall acquire by purchase or lease (provided, in the event of a lease, the terms of the lease shall be subject to the approval of the City Manager or his designee), within 120 days after the commencement of the renewal term, new equipment. Such equipment shall have a value of no less than five hundred thousand dollars (\$500,000), and no greater than eight hundred thousand dollars (\$800,000); provided, that in the event that the City requires that Concessionaire acquire equipment having a value of eight hundred thousand dollars (\$800,000), Concessionaire shall acquire equipment having a value of at least \$680,000, and Concessionaire shall acquire ancillary concession-related capital improvements having a value of at least \$120,000; provided, however, to the extent Concessionaire acquires ancillary concession-related capital improvements having a value of less than \$120,000, then Concessionaire agrees to acquire equipment having a value equal to the difference between \$120,000 and the value of the ancillary concession-related capital improvements so acquired. The City Manager or his designee shall approve any proposed acquisition of equipment contemplated in this Paragraph 1 prior to Concessionaire's order of same.
2. The yearly fee due to the City as a result of beachfront equipment rentals and the sale of Skin Care Products shall be the greater of (a) the amount of the beachfront equipment and sale of Skin Care Products fee minimum guarantee (\$388,288, without options; \$449,549 with options) applicable to the fifth year of the original term of the Agreement, and (b) the amount of the average, over the original five year term of the Agreement, of the annual percentage beachfront equipment and sale of Skin Care Products fee with or without options, as applicable. This yearly fee (i.e., the greater of (a) and (b)) will be escalated annually at the rate of 5% during the renewal term.
3. The yearly fee due to the City as a result of food and beverage sales shall be the greater of (a) the amount of the food and beverage fee minimum guarantee (\$143,581) to the City applicable to the fifth year of the original term of the Agreement, and (b) the amount of the average, over the original five year term of the Agreement, of the annual percentage food and beverage fee to the City. This yearly fee (i.e., the greater of (a) and (b)) will be escalated annually at the rate of 5% during the renewal term.

EXHIBIT 3.1 (page 1 of 6)

beach equipment price schedule by area

Lummus Park

Beach Rentals

Lounge chair	\$8.00 - \$10.00
Umbrella	\$10.00
Cabana	\$15.00
Towel	\$3.00

Luxury Oasis Rentals

Lounge chair	\$15.00
Umbrella	\$15.00
Cabana	\$20.00
Towel	\$5.00

Watersports

Waverunner (1 person) 1/2 hr.	\$65.00
Waverunner (2 people) 1/2 hr.	\$70.00
Banana Boat (each)	\$15.00
Para-sailing 6 min.	\$40.00
Para-sailing 12 min.	\$60.00
Para-sailing 15 min.	\$80.00
Kayak 1 hr.	\$25.00

Lotions

Lifeguard Special

Hawaiian Tropic Oil	\$30.00
Hawaiian Tropic # 4 Gel	\$25.00
Hawaiian Tropic # 8 Gel	\$25.00
Hawaiian Tropic spf 4 Lotion	\$15.00
Hawaiian Tropic spf 8 Lotion	\$15.00
Hawaiian Tropic spf 15 Lotion	\$15.00
Hawaiian Tropic spf 30 Lotion	\$15.00

EXHIBIT 3.1 (page 2 of 6)

beach equipment price schedule by area

Lummus Park (cont'd)

Lotions (cont'd)

Store Brand	
Hawaiian Tropic Protective Tanning Dry Oil	\$15.00
Hawaiian Tropic Aloe Vera	\$12.00
Hawaiian Tropic Baby Faces Sunblock	\$9.59
Hawaiian Tropic Splash for Kids	\$8.49
Hawaiian Tropic 30 Plus Sunblock	\$8.49
Hawaiian Tropic 15 Plus Sunblock	\$8.29
Hawaiian Tropic Deep Dark Self Tanning Lotion	\$8.29
Hawaiian Tropic Protective Tanning Lotion	\$7.19
Hawaiian Tropic Golden Tanning Lotion	\$7.19
Hawaiian Tropic Dark Tanning Lotion	\$5.99
Hawaiian Tropic Protective Tanning Dry Oil	\$6.99
Hawaiian Tropic Dark Tanning Oil	\$6.99
Hawaiian Tropic Tan Amplifier Spray Oil	\$6.99
Hawaiian Tropic Tan Amplifier Spray Gel	\$6.99
Hawaiian Tropic Tan Amplifier Carrot Oil	\$6.99
Hawaiian Tropic Tan Amplifier Tan Max Spray	\$8.29
Hawaiian Tropic Tan Amplifier Tan Max Lotion	\$8.29
Hawaiian Tropic Aloe After Sun Moisturizer	\$6.59
Hawaiian Tropic Cool Aloe I.C.E. Burn Relief	\$6.59

EXHIBIT 3.1 (page 3 of 6)

beach equipment price schedule by area

Ocean Terrace

Beach Rentals

Lounge chair	\$5.00
Umbrella	\$7.00
Cabana	\$10.00
Towel	\$3.00

Watersports

Waverunner (1 person) 1/2 hr.	\$65.00
Waverunner (2 people) 1/2 hr.	\$70.00
Banana Boat (each)	\$15.00
Para-sailing 6 min.	\$40.00
Para-sailing 12 min.	\$60.00
Para-sailing 15 min.	\$80.00
Kayak 1 hr.	\$25.00
Hobie Cat 1 hr.	\$40.00

Lotions

Lifeguard Special

Hawaiian Tropic Oil	\$30.00
Hawaiian Tropic # 4 Gel	\$25.00
Hawaiian Tropic # 8 Gel	\$25.00
Hawaiian Tropic spf 4 Lotion	\$15.00
Hawaiian Tropic spf 8 Lotion	\$15.00
Hawaiian Tropic spf 15 Lotion	\$15.00
Hawaiian Tropic spf 30 Lotion	\$15.00

EXHIBIT 3.1 (page 4 of 6)

beach equipment price schedule by area

Ocean Terrace (cont'd)

Lotions (cont'd)

Store Brand

Hawaiian Tropic Protective Tanning Dry Oil	\$15.00
Hawaiian Tropic Aloe Vera	\$12.00
Hawaiian Tropic Baby Faces Sunblock	\$9.59
Hawaiian Tropic Splash for Kids	\$8.49
Hawaiian Tropic 30 Plus Sunblock	\$8.49
Hawaiian Tropic 15 Plus Sunblock	\$8.29
Hawaiian Tropic Deep Dark Self Tanning Lotion	\$8.29
Hawaiian Tropic Protective Tanning Lotion	\$7.19
Hawaiian Tropic Golden Tanning Lotion	\$7.19
Hawaiian Tropic Dark Tanning Lotion	\$5.99
Hawaiian Tropic Protective Tanning Dry Oil	\$6.99
Hawaiian Tropic Dark Tanning Oil	\$6.99
Hawaiian Tropic Tan Amplifier Spray Oil	\$6.99
Hawaiian Tropic Tan Amplifier Spray Gel	\$6.99
Hawaiian Tropic Tan Amplifier Carrot Oil	\$6.99
Hawaiian Tropic Tan Amplifier Tan Max Spray	\$8.29
Hawaiian Tropic Tan Amplifier Tan Max Lotion	\$8.29
Hawaiian Tropic Aloe After Sun Moisturizer	\$6.59
Hawaiian Tropic Cool Aloe I.C.E. Burn Relief	\$6.59

EXHIBIT 3.1 (page 5 of 6)

beach equipment price schedule by area

North Shore Open Space Park

Beach Rentals

Lounge chair	\$5.00
Umbrella	\$7.00
Cabana	\$10.00

Watersports

Waverunner (1 person) 1/2 hr.	\$65.00
Waverunner (2 people) 1/2 hr.	\$70.00
Banana Boat (each)	\$15.00
Para-sailing 6 min.	\$40.00
Para-sailing 12 min.	\$60.00
Para-sailing 15 min.	\$80.00
Kayak 1 hr.	\$25.00
Hobie Cat 1 hr.	\$40.00

Lotions

Lifeguard Special

Hawaiian Tropic Oil	\$30.00
Hawaiian Tropic # 4 Gel	\$25.00
Hawaiian Tropic # 8 Gel	\$25.00
Hawaiian Tropic spf 4 Lotion	\$15.00
Hawaiian Tropic spf 8 Lotion	\$15.00
Hawaiian Tropic spf 15 Lotion	\$15.00
Hawaiian Tropic spf 30 Lotion	\$15.00

EXHIBIT 3.1 (page 6 of 6)

beach equipment price schedule by area

North Shore Open Space Park (cont'd)

Lotions (cont'd)

Store Brand

Hawaiian Tropic Protective Tanning Dry Oil	\$15.00
Hawaiian Tropic Aloe Vera	\$12.00
Hawaiian Tropic Baby Faces Sunblock	\$9.59
Hawaiian Tropic Splash for Kids	\$8.49
Hawaiian Tropic 30 Plus Sunblock	\$8.49
Hawaiian Tropic 15 Plus Sunblock	\$8.29
Hawaiian Tropic Deep Dark Self Tanning Lotion	\$8.29
Hawaiian Tropic Protective Tanning Lotion	\$7.19
Hawaiian Tropic Golden Tanning Lotion	\$7.19
Hawaiian Tropic Dark Tanning Lotion	\$5.99
Hawaiian Tropic Protective Tanning Dry Oil	\$6.99
Hawaiian Tropic Dark Tanning Oil	\$6.99
Hawaiian Tropic Tan Amplifier Spray Oil	\$6.99
Hawaiian Tropic Tan Amplifier Spray Gel	\$6.99
Hawaiian Tropic Tan Amplifier Carrot Oil	\$6.99
Hawaiian Tropic Tan Amplifier Tan Max Spray	\$8.29
Hawaiian Tropic Tan Amplifier Tan Max Lotion	\$8.29
Hawaiian Tropic Aloe After Sun Moisturizer	\$6.59
Hawaiian Tropic Cool Aloe I.C.E. Burn Relief	\$6.59

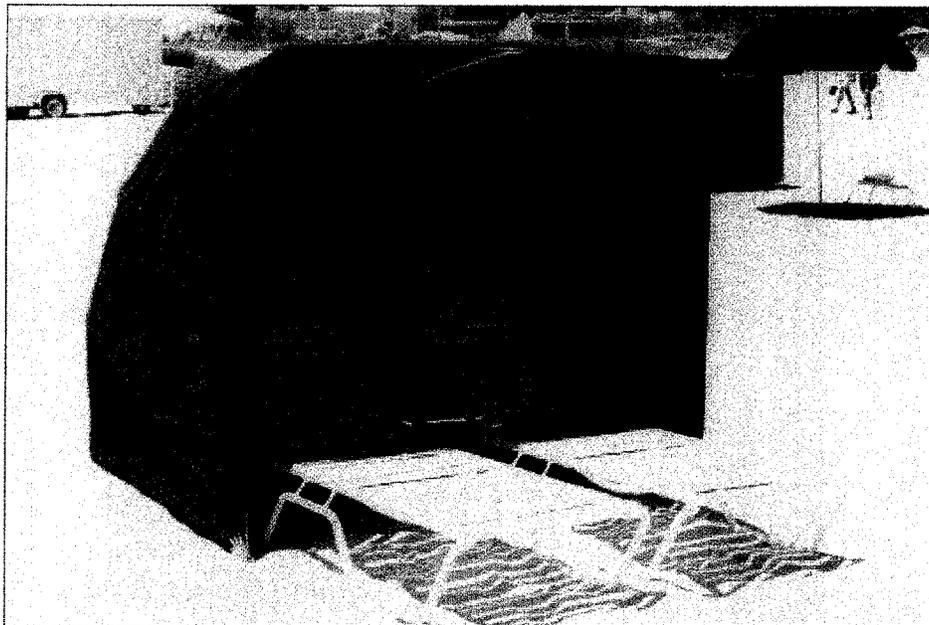
EXHIBIT 3.1.1 (page 1 of 3)

equipment description

STANDARD



standard vinyl strap lounge chairs with umbrella & 3 inch pad

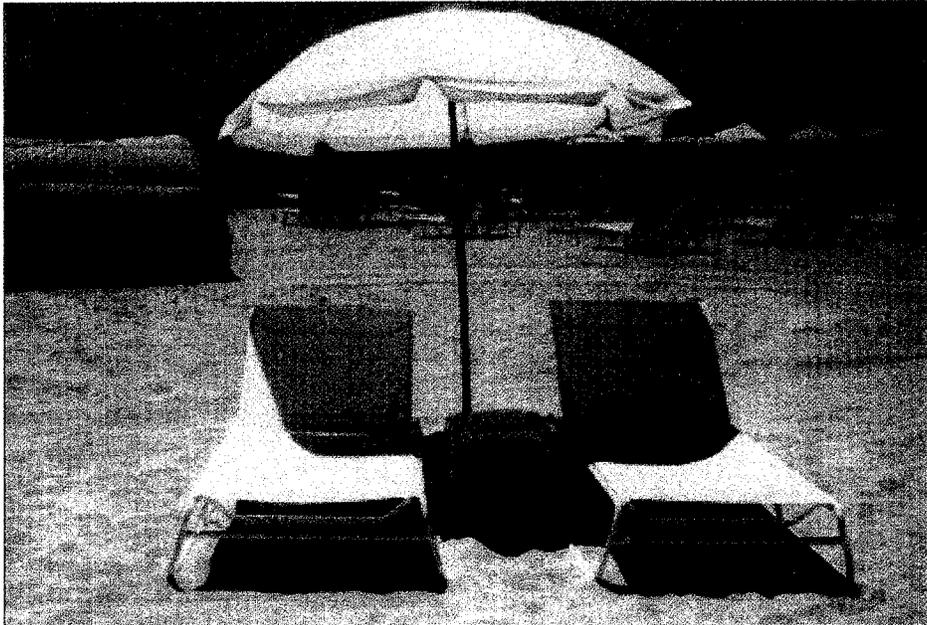


standard vinyl strap lounge chair with sun canopy

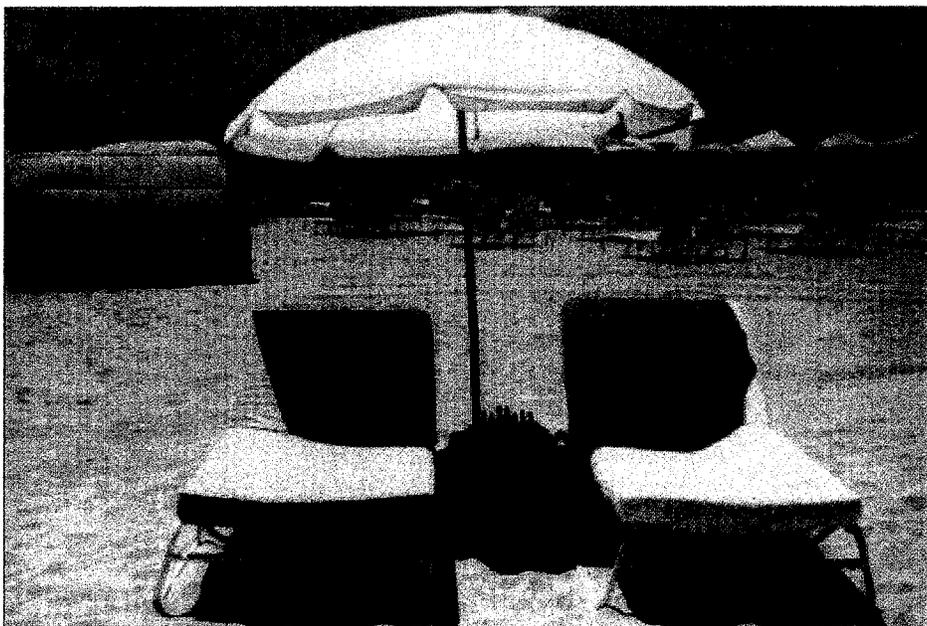
EXHIBIT 3.1.1 (page 2 of 3)

equipment description

OASIS



double wide mesh lounge chair with side table & umbrella

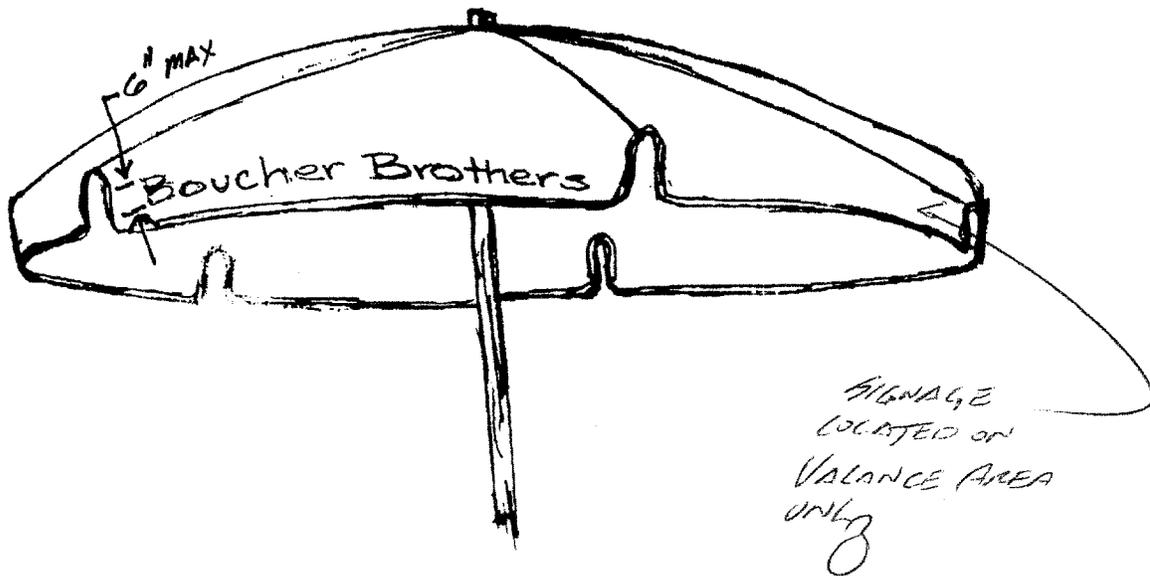


double wide mesh lounge chair with 6 inch pad, side table & umbrella

EXHIBIT 3.1.1 (page 3 of 3)



8378 NW 56 STREET • MIAMI, FL 33147
PH 305-513-2503 • FAX 305-513-2507



DESIGN REVIEW/HISTORIC PRESERVATION FOR BUILDING PERMIT

DATE OF DIRECTOR APPROVAL 10/19/01 BY RM

BUILDING PERMIT CANNOT BE ISSUED

AFTER:

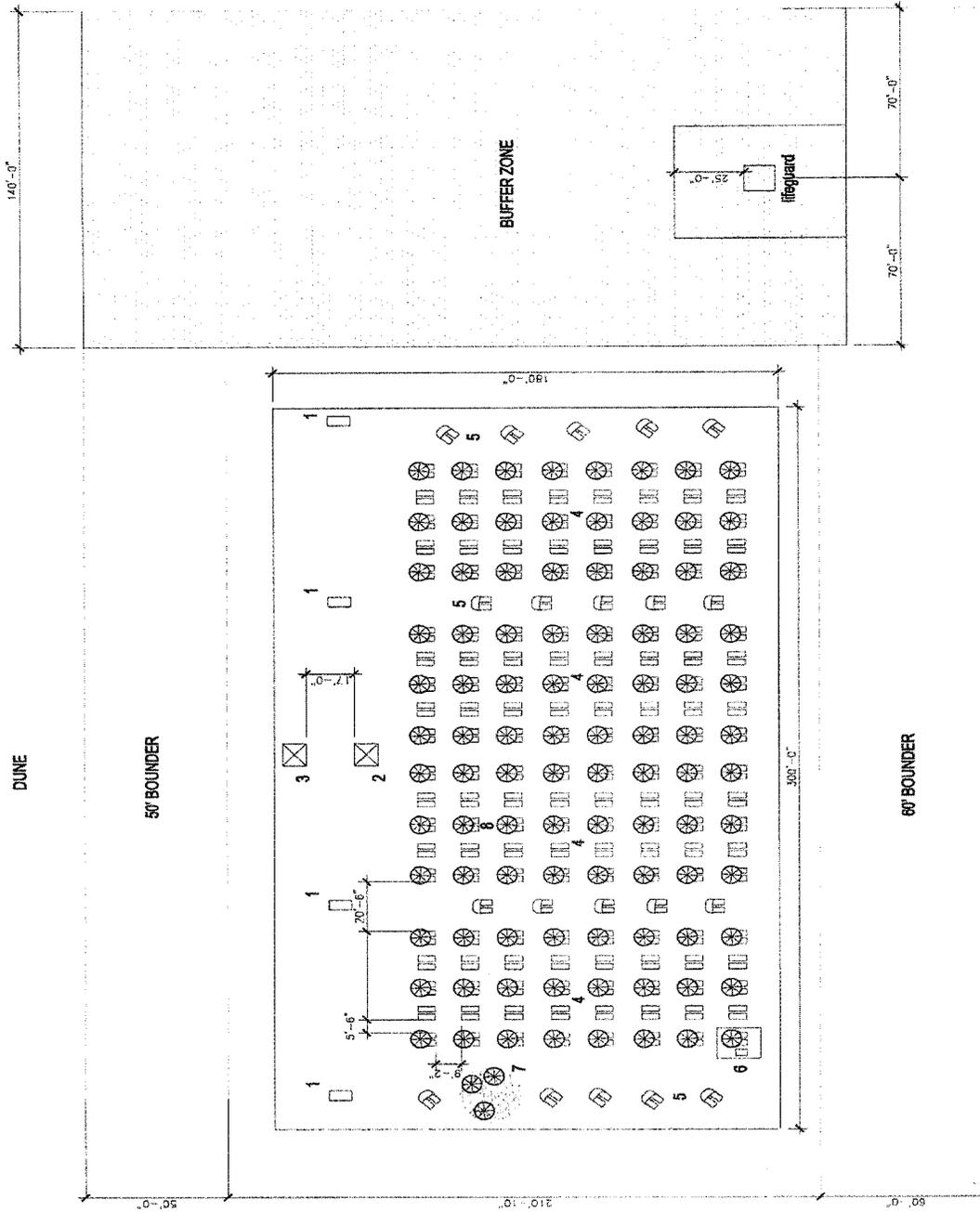
ANY MODIFICATIONS TO THESE PERMIT DRAWINGS MUST BE REVIEWED AND APPROVED BY DESIGN REVIEW/HISTORIC PRESERVATION STAFF PRIOR TO THE ISSUANCE OF A BUILDING PERMIT. ANY MODIFICATIONS TO THESE PERMIT DRAWINGS AFTER THE ISSUANCE OF A BUILDING PERMIT MUST BE REVIEWED AND APPROVED BY DESIGN REVIEW/HISTORIC PRESERVATION STAFF PRIOR TO THE COMPLETION OF THE PROJECT.

EXHIBIT 3.1.2 (page 1 of 12)

Site Plan Exhibit Clarification

Concessionaire and City agree and understand that the following exhibits (Exhibit 3.1.2) which total eleven in all, may be amended by the parties, as mutually agreed upon, in order to facilitate operational issues which may result from time to time, related to the deployment of chairs, layout of the concession facilities, proximity to life guard stands, buffer zone locations, etc. within the Concession Areas, so long as the Lummus Park beach frontage that is to be left unencumbered by any of the Concessionaire's equipment and/or facilities and not subject to Concessionaire's use, does not equal less than forty nine percent (49%) of the total beach frontage (from the northernmost boundary to the southernmost boundary) of the Lummus Park Beach as defined in Paragraph 2.1 of this Concession Agreement.

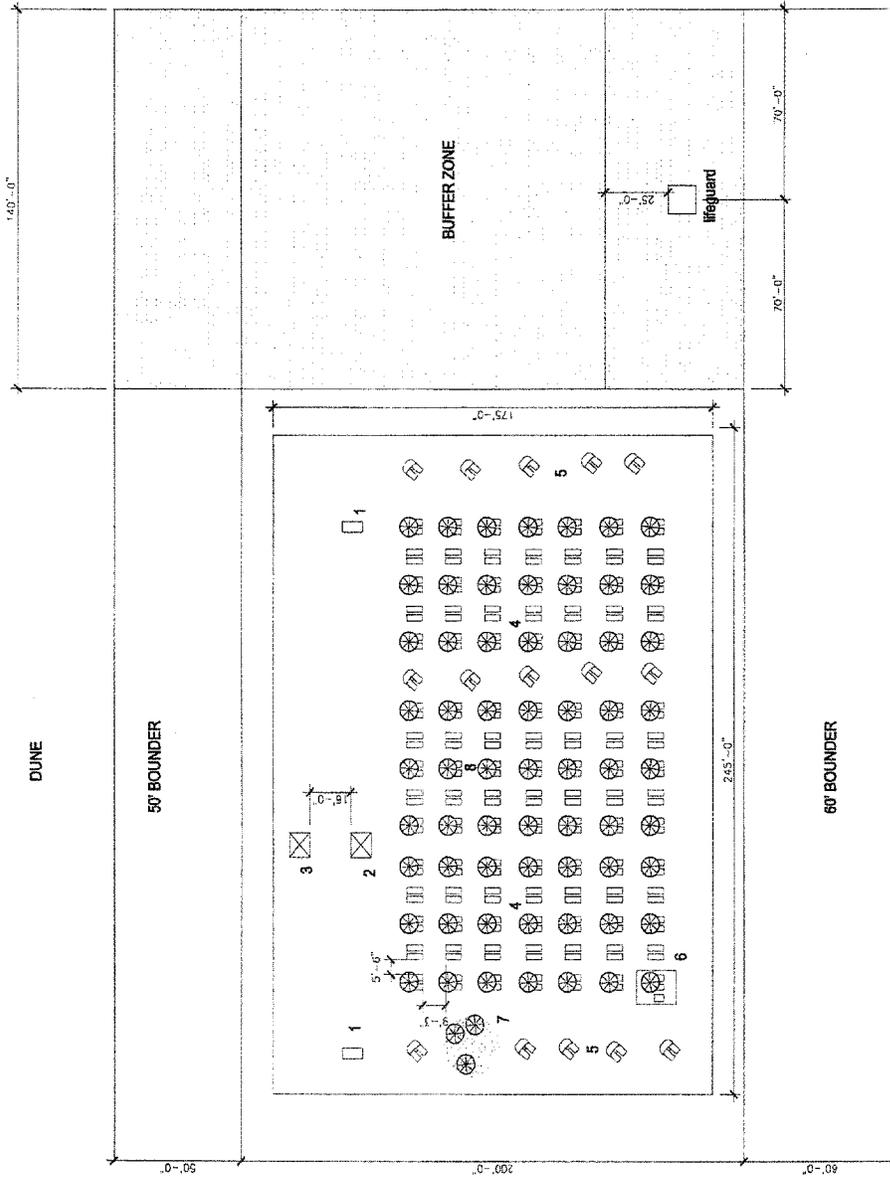
EXHIBIT 3.1.2 (page 3 of 12)



boucherbrothers miamibeach llc
OPpenheim
 architecture + design llc

6TH/7TH STREET
 SCALE: 1"=40'
 OCEAN
 1 STORAGE 2 STORAGE/ WORK HUT 3 CONCESSION 4 CHAIRS 5 CABANAS 6 ADA ACCESSIBLE 7 CHILDREN'S PLAYGROUND 8 UMBRELLAS

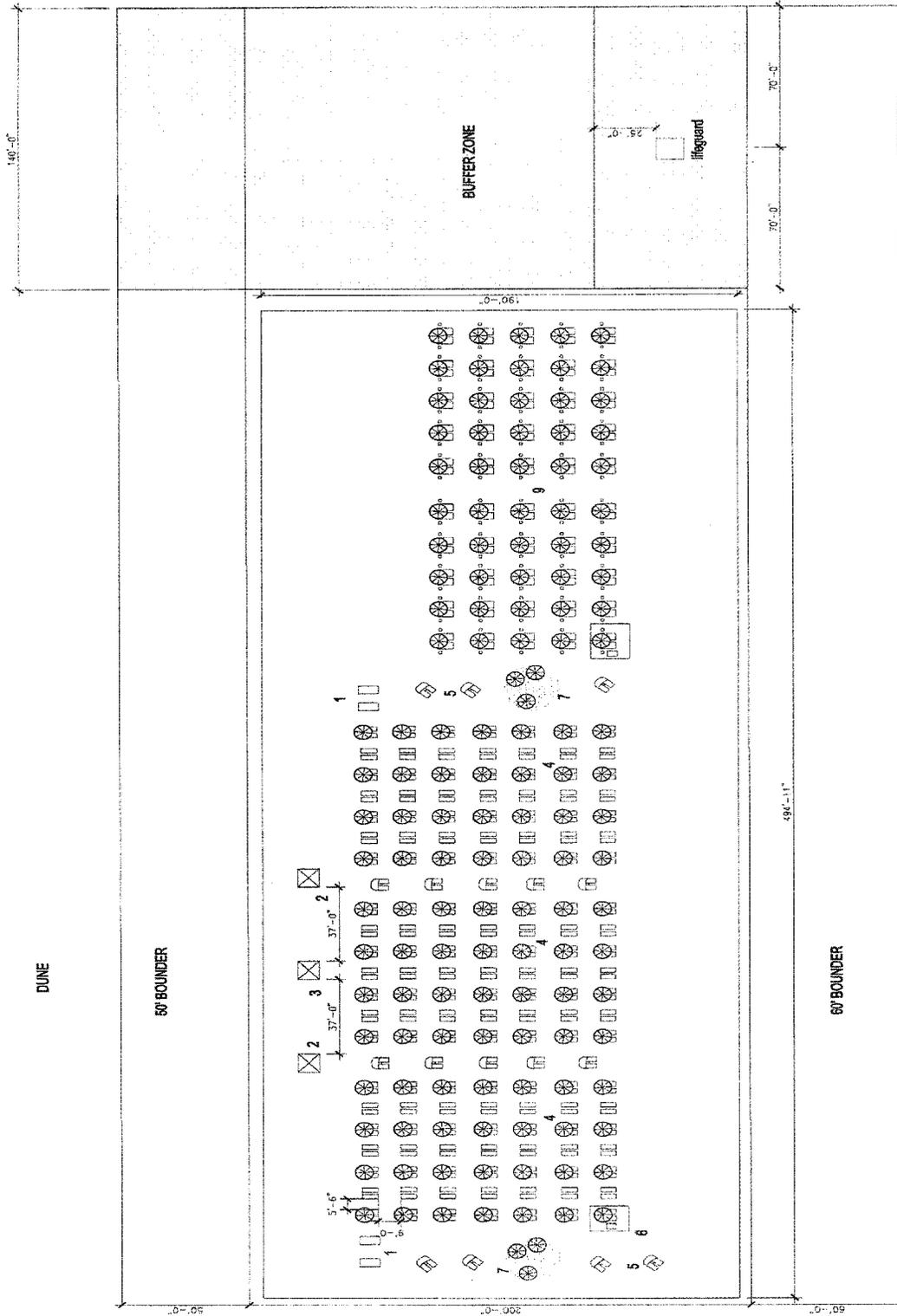
EXHIBIT 3.1.2 (page 6 of 12)



boucherbrothers miamibeach l.l.c
 OPPENHEIM
 ARCHITECTURE & DESIGN L.L.C.

11TH - 12TH STREET
 OCEAN
 1 STORAGE 2 STORAGE/ WORK HUT 3 CONCESSION 4 CHAIRS 5 CABANAS 6 ADA ACCESSIBLE 7 CHILDREN'S PLAYGROUND 8 UMBRELLAS

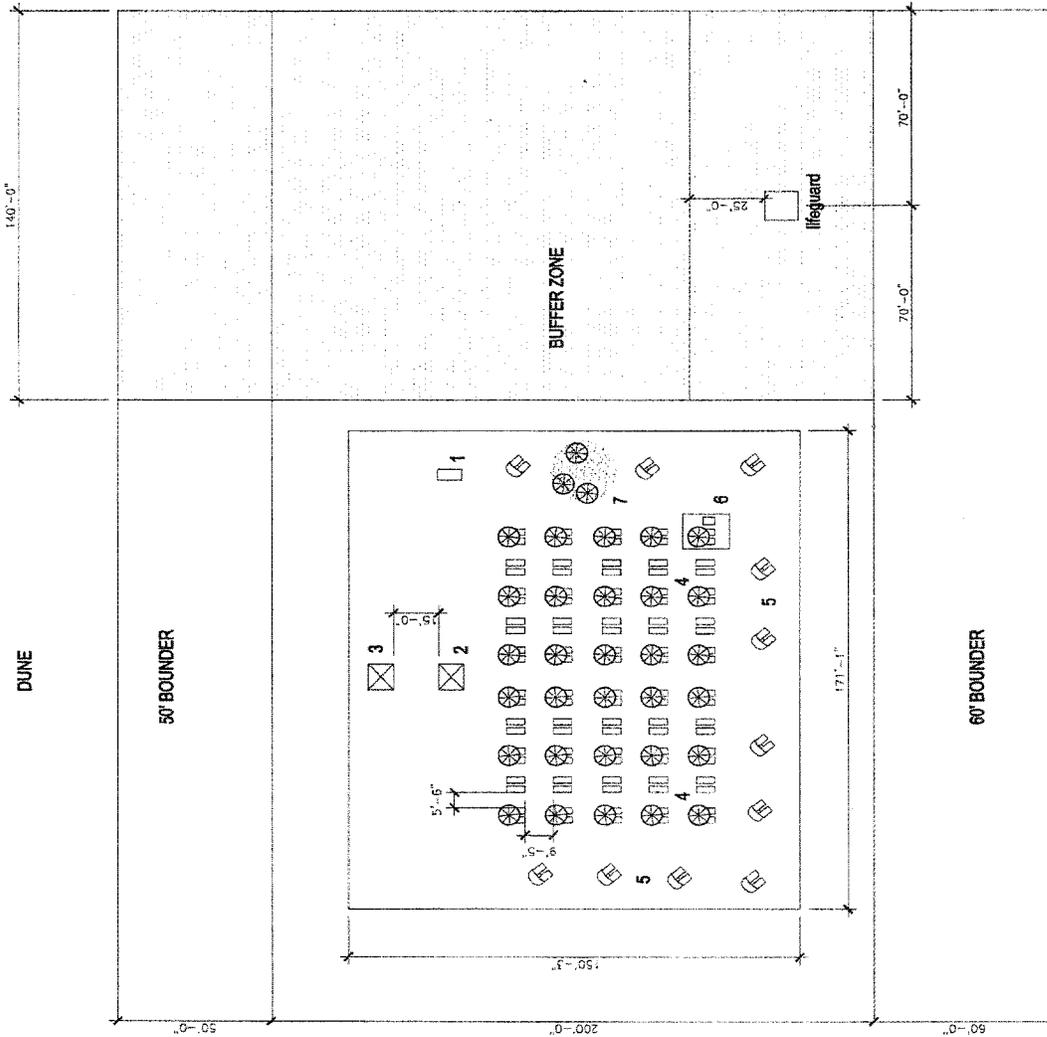
EXHIBIT 3.1.2 (page 7 of 12)



boucherbrothers miami beach I.L.C.
OPPENHEIM
 ARCHITECTURE & DESIGN I.L.C.

13TH STREET
 OCEAN
 1 STORAGE 2 STORAGE/WORK HUT 3 CONCESSION 4 CHAIRS 5 CABANAS 6 ADA ACCESSIBLE 7 CHILDRENS PLAYGROUND 8 UMBRELLAS 9 LUXURY OASIS

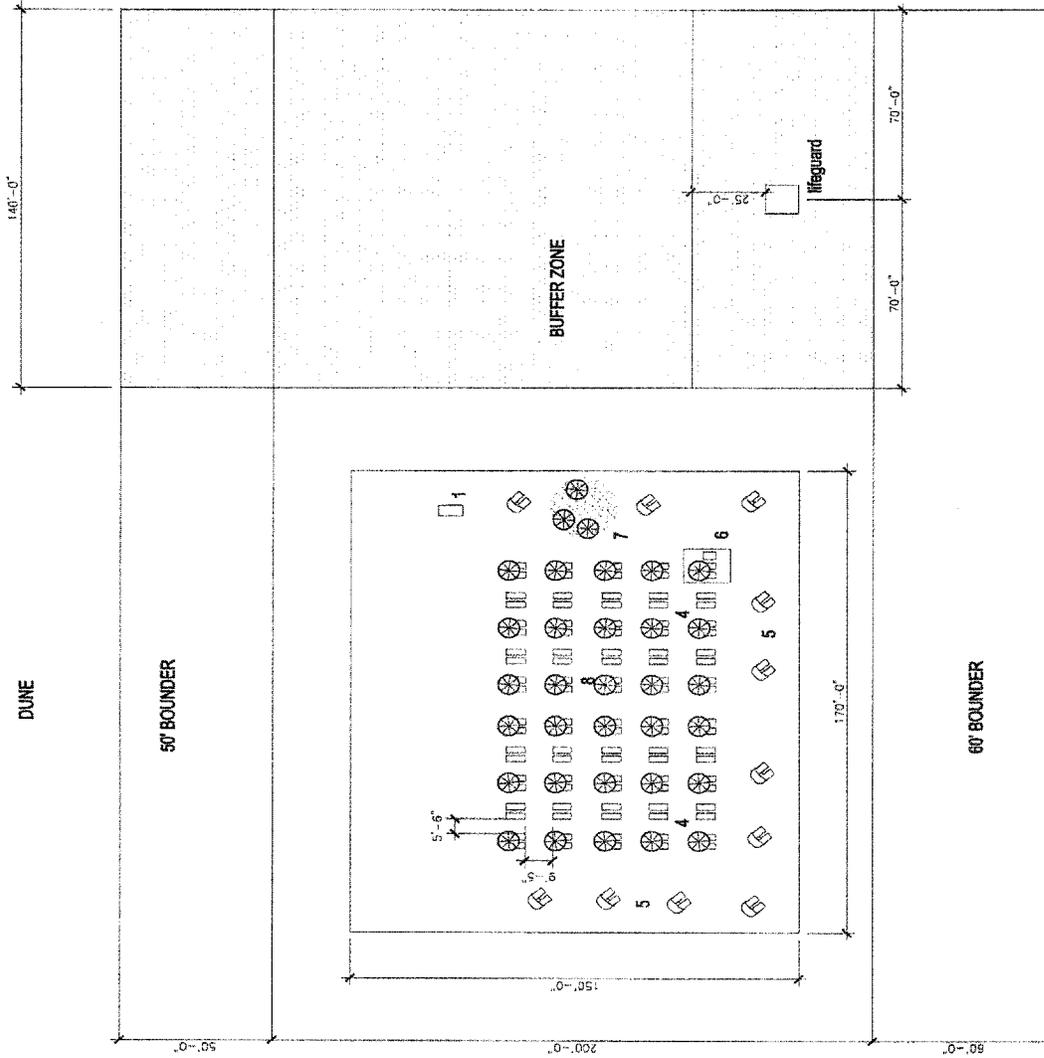
EXHIBIT 3.1.2 (page 8 of 12)



boucherbrothers miamibeach l.l.c
 OPPENHEIM
 ARCHITECTURE & DESIGN, L.L.C.

14TH STREET OCEAN
 SCALE: 1/4"=1'-0"
 1 STORAGE 2 STORAGE/WORK HUT 3 CONCESSION 4 CHAIRS 5 CABANAS 6 ADA ACCESSIBLE 7 CHILDRENS PLAYGROUND 8 UMBRELLAS

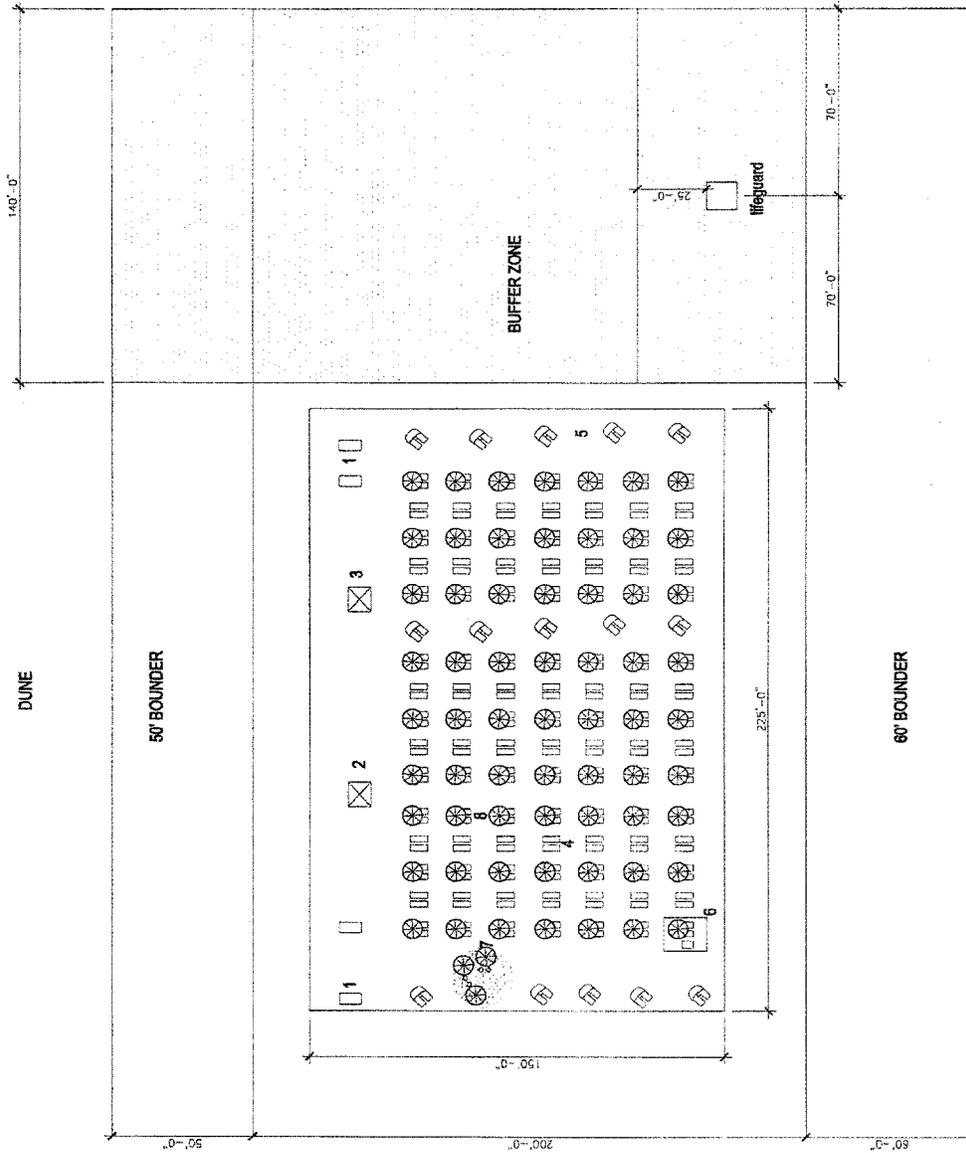
EXHIBIT 3.1.2 (page 9 of 12)



boucherbrothers miamibeach I.I.C
CrPENner
 architects + design LLC

14TH LANE
 80' x 15' x 40'
 OCEAN
 1 STORAGE 2 STORAGE/WORK HUT 3 CONCESSION 4 CHAIRS 5 CABANAS 6 ADA ACCESSIBLE 7 CHILDREN'S PLAYGROUND 8 UMBRELLAS

EXHIBIT 3.1.2 (page 10 of 12)

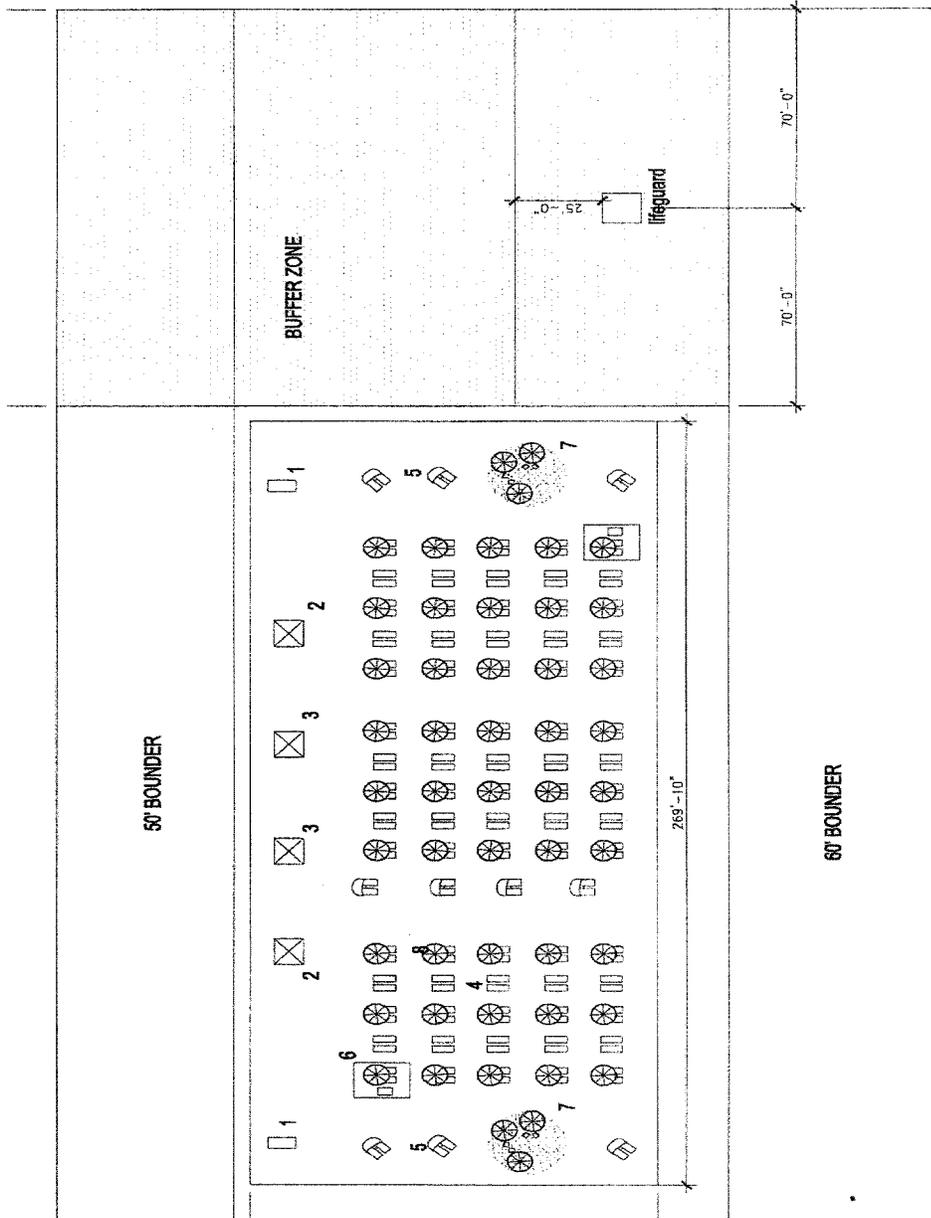


boucherbrothers miami beach i.l.c.
 OPPENHEIM
 architecture + design l.l.c.

73RD-75TH STREET
 scale: 1"=40'

1 STORAGE 2 STORAGE/WORK HUT 3 CONCESSION 4 CHAIRS 5 CABANAS 6 ADA ACCESSIBLE 7 CHILDREN'S PLAYGROUND 8 UMBRELLAS

EXHIBIT 3.1.2 (page 11 of 12)



79TH-85TH STREET

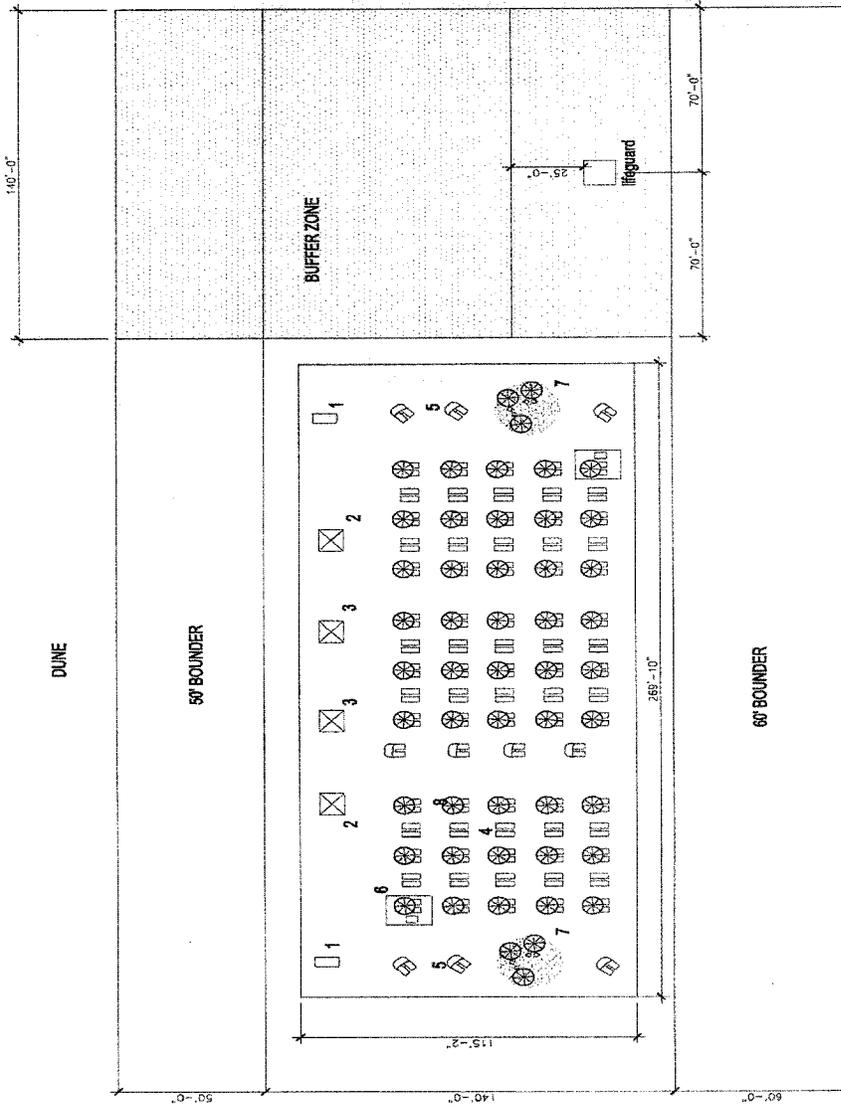
SCALE: 1"=40'

OCEAN

1 STORAGE 2 STORAGE/WORK HUT 3 CONCESSION 4 CHAIRS 5 CABANAS 6 ADA ACCESSIBLE 7 CHILDREN'S PLAYGROUND 8 UMBRELLAS

boucherbrothers miami beach I.L.C.
 OPPENHEIM
 architecture + design I.L.C.

EXHIBIT 3.1.2 (page 12 of 12)



- 1 STORAGE 2 STORAGE/WORK HUT 3 CONCESSION 4 CHAIRS 5 CABANAS 6 ADA ACCESSIBLE 7 CHILDRENS PLAYGROUND 8 UMBRELLAS

boucherbrothers miamibeach L.L.C
 OPPENHEIM
 architecture + design L.L.C

EXHIBIT 3.1.3

Area	Chairs	Umbrellas	Sun Canopies	Storage / Work Facilities	Storage	Food & Beverage Trailers
5th Street	150	50	10	1	0	1
6th Street	150	50	10	1	1	1
7th Street	150	50	10	0	1	0
8th Street	200	60	10	1	1	1
9th Street	275	130	15	1	2	1
10th Street	275	130	15	1	2	1
11th Street	150	35	5	1	0	1
12th Street	150	35	5	0	1	0
13th Street	300	100	15	2	2	1
14th Street	100	30	10	1	1	1
14th Lane	100	30	10	0	1	0
Ocean Terrace	200	70	10	1	2	1
N.S.O.S. Park	200	70	10	1	2	1
Total	2400	840	135	11	16	10

EXHIBIT 3.1.7

Minimum Required Concession Equipment to be available for deployment as of November 5, 2001:

ITEM	Quantity
Standard Lounge Chair	600
Luxury Lounge Chair	100
Umbrellas.....	30
Sun Canopies	0
Storage Facilities	10
Dispensing Facilities	0
Food & Beverage Facilities	2

EXHIBIT 3.2.1 (page 1 of 3)

food & beverage menu

Lummus Park

Salads	Price
Frozen Grapes	6.00
Fresh Seasonal Fruit	6.00
Caesar Salad	5.00
Chicken Caesar Salad	7.00
Seafood Salad	7.00

Appetizers	
Shrimp Cocktail	9.00
Peel & Eat Shrimp	8.00
Monty's Stone Crabs (<i>Seasonal</i>)	Market Price

Cold Sandwiches	
Assorted Sandwiches	4.00 - 6.00
Turkey Wrap	6.00
Club Wrap	6.00
Assorted Wraps	6.00

Hot Sandwiches	
Kosher Hot Dog	3.00
Sirloin Burger 8 oz.	6.00
Blackened Chicken Sandwich	7.00
Cuban Sandwich	7.00
Seafood Crêpe	7.00
Vegetable Crêpe	6.00
Potato Chips	1.00

Beverages	
Bottled Water	2.75
Soft Drinks	2.75
Iced Tea	2.50
Gator Aid	3.00
Fresh Juice	3.00
Virgin Daiquiri	4.00
Virgin Pifa Colada	4.00
Iced Cappuccino	3.00
Virgin Margarita	4.00

Desserts	
Frozen Yogurt	3.00
Ice Cream	3.00
Specialty Desserts	4.00
Cuban Pastries	2.00

Prices subject to change within 15% range

EXHIBIT 3.2.1 (page 2 of 3)

food & beverage menu

Ocean Terrace

Salads	Price
Frozen Grapes	6.00
Fresh Seasonal Fruit	6.00
Caesar Salad	5.00
Chicken Caesar Salad	7.00
Seafood Salad	7.00

Appetizers	
Shrimp Cocktail	9.00
Peel & Eat Shrimp	8.00
Monty's Stone Crabs (Seasonal)	Market Price

Cold Sandwiches	
Turkey Wrap	6.00
Club Wrap	6.00

Hot Sandwiches	
Kosher Hot Dog	3.00
Sirloin Burger 8 oz.	6.00
Blackened Chicken Sandwich	7.00
Cuban Sandwich	7.00
Seafood Crêpe	7.00
Vegetable Crêpe	6.00
Potato Chips	.75

Beverages	
Bottled Water	2.50
Soft Drinks	2.50
Iced Tea	2.50
Gator Aid	3.00
Fresh Juice	3.00
Virgin Daiquiri	4.00
Virgin Piña Colada	4.00
Iced Cappuccino	3.00
Virgin Margarita	4.00

Desserts	
Frozen Yogurt	3.00
Ice Cream	3.00
Specialty Desserts	4.00
Cuban Pastries	2.00

Prices subject to change within 15% range

EXHIBIT 3.2.1 (page 3 of 3)

food & beverage menu

North Shore Open Space Park

Salads	Price
Frozen Grapes	6.00
Fresh Seasonal Fruit	6.00
Caesar Salad	5.00
Chicken Caesar Salad	7.00
Seafood Salad	7.00

Appetizers	Price
Shrimp Cocktail	9.00
Peel & Eat Shrimp	8.00
Monty's Stone Crabs (Seasonal)	Market Price

Cold Sandwiches	Price
Turkey Wrap	6.00
Club Wrap	6.00

Hot Sandwiches	Price
Kosher Hot Dog	3.00
Sirloin Burger 8 oz.	6.00
Blackened Chicken Sandwich	7.00
Cuban Sandwich	7.00
Seafood Crêpe	7.00
Vegetable Crêpe	6.00
Potato Chips	.75

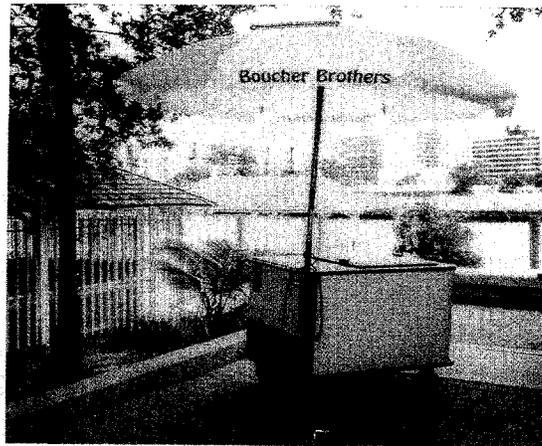
Beverages	Price
Bottled Water	2.50
Soft Drinks	2.50
Iced Tea	2.50
Gator Aid	3.00
Fresh Juice	3.00
Virgin Daiquiri	4.00
Virgin Piña Colada	4.00
Iced Cappuccino	3.00
Virgin Margarita	4.00

Desserts	Price
Frozen Yogurt	3.00
Ice Cream	3.00
Specialty Desserts	4.00
Cuban Pastries	2.00

Prices subject to change within 15% range

EXHIBIT 3.2.1.1

ICE CREAM
CARTS TO BE
FINISHED IN WHITE →



DEPARTMENT OF HISTORIC PRESERVATION
FOR BUILDING PERMIT

DATE OF DECISION APPROVAL _____

CONTRACT PERMITS NOT BE ISSUED

ADDENDUM TO EXISTING APPLICATION

ANY CHANGES TO THESE PERMIT DRAWINGS
MUST BE REVIEWED AND APPROVED BY THE
DEPARTMENT OF HISTORIC PRESERVATION STAFF PRIOR TO
THE ISSUANCE OF A BUILDING PERMIT. ANY
VIOLATIONS OF THESE PERMIT CONDITIONS
MAY BE PENALIZED. THE DEPARTMENT OF HISTORIC
PRESERVATION WILL BE NOTIFIED OF ANY
VIOLATIONS OF THESE PERMIT CONDITIONS.
THE DEPARTMENT OF HISTORIC PRESERVATION
RESERVES THE RIGHT TO STOP WORK ON SITE
IF THE PROJECT IS NOT IN ACCORDANCE WITH
THESE PERMIT CONDITIONS.

* NUMBER OF CARTS
LIMITED (BETWEEN 4 AND 7
DEPENDENT ON CAPACITY AND
BEACH ATTENDANCE

EXHIBIT 3.3

sundries

Beach Toys	\$5.00 to \$25.00
Children's Beach Toys	\$5.00 to \$25.00
Hats	\$10.00 to \$20.00
Lip Balm	\$ 3.00 to \$ 8.00
Misters	\$10.00 to \$20.00
Rafts	\$10.00 to \$25.00

Prices subject to change within 15% range

EXHIBIT 3.4.1

beach equipment price schedule by area

Lummus Park

Watersports	
Waverunner (1 person) 1/2 hr.	\$65.00
Waverunner (2 people) 1/2 hr.	\$70.00
Banana Boat (each)	\$15.00
Para-sailing 6 min.	\$40.00
Para-sailing 12 min.	\$60.00
Para-sailing 15 min.	\$80.00
Kayak 1 hr.	\$25.00

EXHIBIT 3.5.1 (page 1 of 5)



CITY OF MIAMI BEACH PLANNING DEPARTMENT ADMINISTRATIVE DESIGN REVIEW APPLICATION FORM

1700 Convention Center Drive, Miami Beach, Fl. 33139
Telephone: (305) 673-7550 FAX: (305) 673-7559
PLEASE TYPE OR USE BOLD PRINT TO COMPLETE ALL APPLICABLE ITEMS BELOW.

Boucher Brothers Miami Beach LLC Single Family Home
 Yes No
Name of Business or Property (if any)

LUMMUS PARK BEACH CONCESSION Unit #
Address of Property (job site)

CITY OF MIAMI BEACH
Name of Property Owner

Same
Address of Property Owner (if same, so indicate) Telephone

Boucher, Steve 20971 NE 30th Court - Aventura FL 33180 Telephone
Name and Address of Contractor

Name and Address of Applicant (if different than property owner or contractor) Telephone

THE UNDERSIGNED APPLICANT HEREBY CERTIFIES THAT HE/SHE UNDERSTANDS THAT A COMPLETED "OWNERS AFFIDAVIT" EXECUTED BY THE OWNER OF THE SUBJECT PROPERTY SHALL BE SUBMITTED TO THE MIAMI BEACH BUILDING DEPARTMENT. IF REQUIRED, PRIOR TO THE ISSUANCE OF A BUILDING PERMIT. THE UNDERSIGNED FURTHER CERTIFIES THAT HE/SHE IS AUTHORIZED (ON BEHALF OF THE OWNER) TO REQUEST THE ABOVE ADMINISTRATIVE DESIGN REVIEW APPROVAL.

Steve Boucher Steven Boucher 9/19/01
Signature of Applicant (Print Name) Date Signed

SEE REVERSE SIDE FOR EXHIBITS AND FEES REQUIRED

NOTES:

1. The fee must be paid at the time of application: if paying by check, please make it payable to the "City of Miami Beach"
2. For additional information on required exhibits, please refer to the application instructions on the reverse side.
3. An administrative design review approval shall only be effective when this form is executed by an authorized staff person of the City of Miami Beach's Planning Department.
4. If mailing, send to: Planning Department, 1700 Convention Center Drive, Miami Beach, Fl. 33139

(Do Not Write Below This Line -- For Staff Use Only)

Antenna Awning Fence Interior Buildout Landscaping Paint Parking Lot Ramp Shutters Sign Speakers Storefront
 Windows Other _____

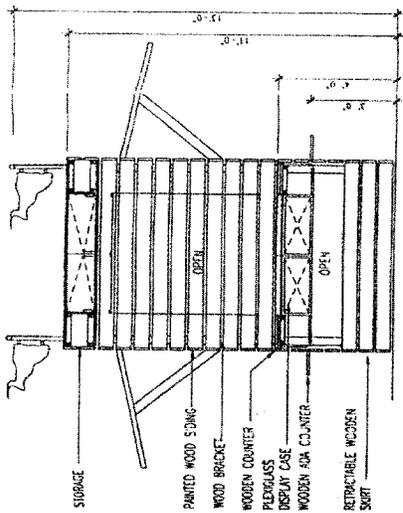
File No. 15395

Date Approved 9.24.01 Init: RA

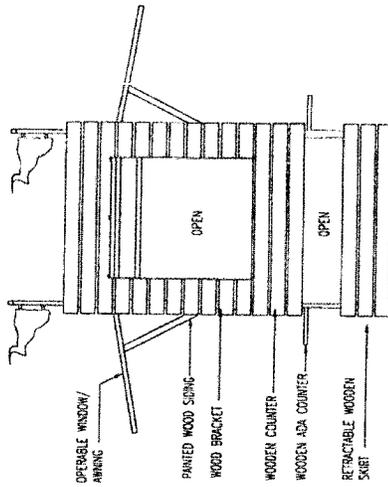
MCR #: _____

FEE: \$ _____

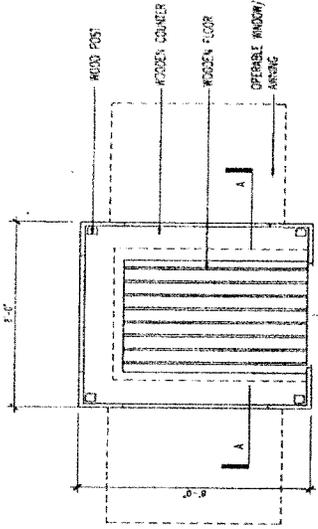
EXHIBIT 3.5.1 (page 2 of 5)



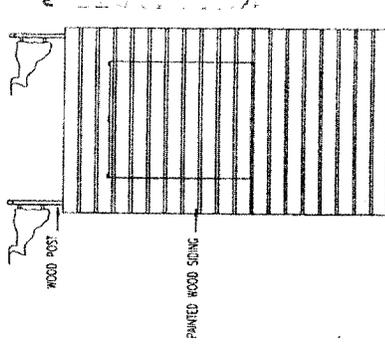
SECTION A-A
SCALE: 1/4" = 1'-0"



ELEVATION
SCALE: 1/4" = 1'-0"



PLAN
SCALE: 1/4" = 1'-0"



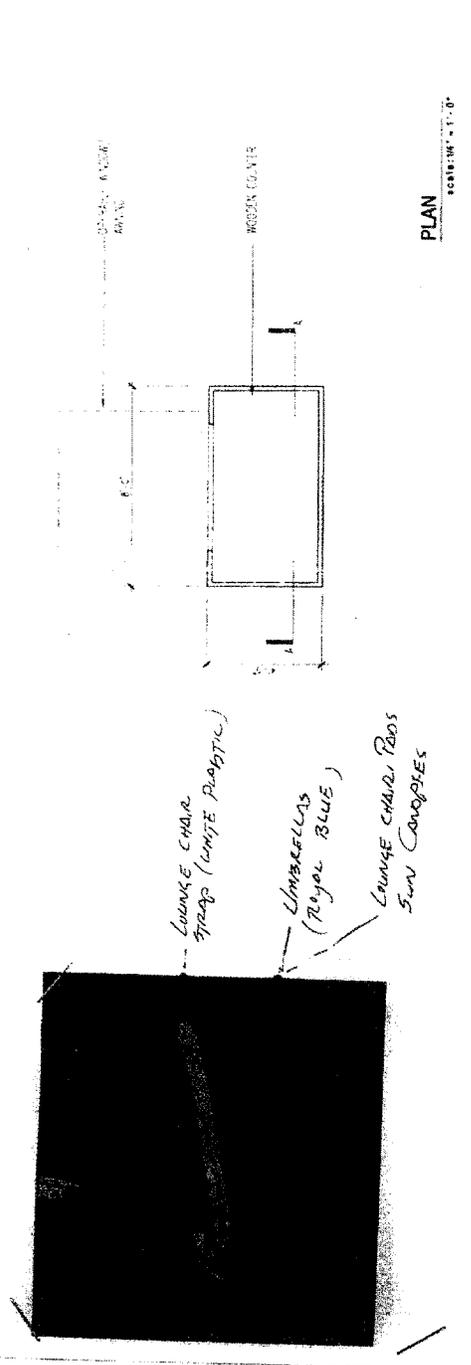
ELEVATION
SCALE: 1/4" = 1'-0"

FOR INFORMATION ONLY
OUR BUILDING PERMIT OFFICE APPROACHES EVERYTHING PERMIT CANNOT BE ISSUED
 ALL INFORMATION TO THESE PLANS DRAWINGS MUST BE REVIEWED AND APPROVED BY DESIGN PROFESSIONALS OF A REGISTERED PROFESSIONAL ENGINEERING FIRM BEFORE THE PERMITTING OFFICE OF A BUILDING DEPARTMENT CAN BE OBTAINED AND APPROVED BY THE BUILDING DEPARTMENT. ALL INFORMATION TO THESE PLANS DRAWINGS MUST BE REVIEWED AND APPROVED BY DESIGN PROFESSIONALS OF A REGISTERED PROFESSIONAL ENGINEERING FIRM BEFORE THE PERMITTING OFFICE OF A BUILDING DEPARTMENT CAN BE OBTAINED AND APPROVED BY THE BUILDING DEPARTMENT.

SCHEMATIC DESIGN NOT FOR CONSTRUCTION

boucherbrothers miamibeach llc
 Oppenheim Architecture - design llc

EXHIBIT 3.5.1 (page 3 of 5)



PLAN
SCALE: 1/4" = 1'-0"

LOUNGE CHAIR
TRAP (WHITE PLASTIC)

UMBRELLAS
(ROYAL BLUE)

LOUNGE CHAIR, POOS
SUN COUPLES



ELEVATIONS
SCALE: 1/4" = 1'-0"



SECTION A-A
SCALE: 1/4" = 1'-0"

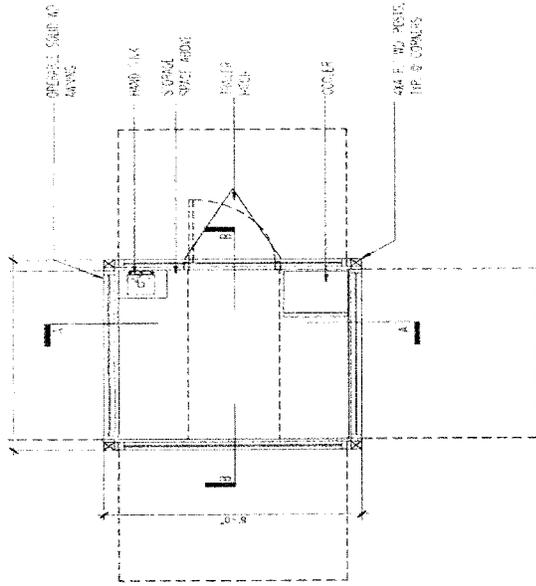
DESIGN REVIEW HISTORIC PRESERVATION
FOR BUILDING PERMIT
DATE OF DIRECTOR APPROVAL: 09/04/20 BY: EA
BUILDING PERMIT CANNOT BE ISSUED
AFTER THESE PERMITS ARE ABOVE SANG
APPLICATIONS TO THESE PERMIT DRAWINGS
REVIEWED AND APPROVED BY DESIGN
PRESERVATION STAFF PER TO
OF A BUILDING PERMIT
AS THESE PERMIT
"PLONG"
THE SUBJECT

*SEE PAGES ABOVE FOR
FINISHES

SCHEMATIC DESIGN NOT FOR CONSTRUCTION

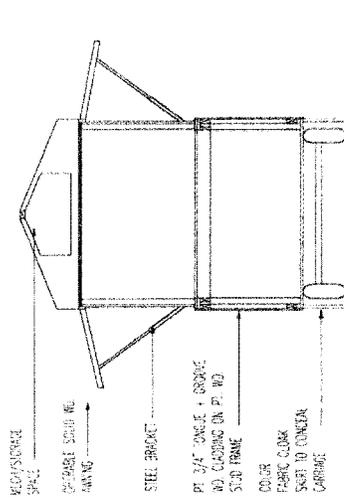
boucherbrothers miamibeach l.l.c
OPPENHEIM
ARCHITECTURE & DESIGN LLC

EXHIBIT 3.5.1 (page 5 of 5)



PLAN
SCALE: 1/4" = 1'-0"

PERMITTING AGRICULTURAL
AND LIVESTOCK USE
SLOD FRAME



SECTION A-A
SCALE: 1/4" = 1'-0"

MECH. SPACE
METAL FRAM.
OPERABLE SLOD ME. HAVING
GRV. METL. FRML. FLOORING SYSTEM
COLOR FABRIC CLANK SART TO CONCREL CARBON

SECTION B-B
SCALE: 1/4" = 1'-0"

FOR HISTORIC PRESERVATION
FOR BUILDING PERMIT
DATE OF DIRECTOR APPROVAL: 4/22/20
BUILDING PERMIT CANNOT BE ISSUED
AFTER: 4/22/20
ALL COMMUNICATIONS TO THESE PERMIT DRAWINGS
MUST BE REFERENCED AND APPROVED BY DESIGN
PROFESSIONAL STAMP AND SIGNATURE OF THE
DESIGNER. THESE PERMIT DRAWINGS
MAY BE USED FOR A BUILDING PERMIT ONLY
IF THEY ARE APPROVED BY DESIGN
PROFESSIONAL STAMP AND SIGNATURE OF THE
DESIGNER. THESE PERMIT DRAWINGS
MAY NOT BE USED FOR ANY OTHER PROJECT.

boucherbrothers miami beach llc
OPPENHEIM
ARCHITECTS - MIAMI, LLC

EXHIBIT 3.6 (page 1 of 5)

OCT-11-2001 03:55 PM BOUCHER BROTHERS MNGMT. 3655383268

BOUCHER BROTHERS MANAGEMENT, INC.
"A Pool, Beach and Water Sports Management Company"

October 11, 2001

Joe Damion
City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL 33139

RE: Evacuation Plan

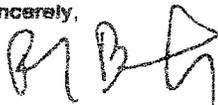
Dear Mr. Damion:

We would like to inform you of our existing evacuation plan for the properties of Lummus Park, Ocean Terrace and North Open Space Park. As part of this plan, Boucher Brothers Management, Inc. will move all beach equipment off the beach in the event of a hurricane warning.

In order to make the evacuation process as expedient as possible, the Boucher Brothers have a contract with a local tow truck company. This company will assist us in moving our equipment off the beach area as soon as we get a hurricane warning. All beach equipment, including lounge chairs, umbrellas, cabanas and storage huts would remain off the beach until a hurricane warning is no longer in effect.

If you should have any questions, please feel free to contact us at (305) 535-8177. We are confident that our evacuation plan is efficient and will guarantee all equipment is moved off the beach in a timely fashion.

Sincerely,



Boucher Brothers

20971 NE 30th COURT
AVENTURA, FLORIDA 33160
MAIN OFFICE (305)535-8177/(305)933-3776
S. BEACH OFFICES (305)218-1024 / (305)218-1026 N. BEACH OFFICES (305)218-1025 / (305)218-1023
FAX #'S (305)933-8384/(305)538-3288 E MAIL: Soubros4@AOL.COM

EXHIBIT 3.6 (page 2 of 5)

BOUCHER BROTHERS MANAGEMENT EVACUATION PLAN

LUMMUS PARK, OCEAN TERRACE & OPEN SPACE PARK

In the event of a hurricane watch, Boucher Brothers Management will implement its existing Evacuation Plan for the areas of Lummus Park, Ocean Terrace, and North Open Space Park. One of the Evacuation Plan's main goals is to have all beach operations shut down and all beach equipment moved off the beach within 8 hours after a hurricane watch has been issued. This goal of expedient evacuation does not compromise, but is in fact congruent, with the safety of the process.

- The Boucher Brothers Management has a trained Evacuation Team comprised of 20-40 team members from its staff. There are 3 team members responsible for charting any disturbances on the Atlantic Ocean, particularly the Caribbean zone, during Hurricane Season. These are the same people responsible for tracking and reporting all inclement weather for water sports and beach rental purposes year-round. One team member is stationed in the main office and the other two are stationed out in the field. It is these three team members who will report to the president of the company (James R. Boucher) whenever a hurricane watch is in effect for South Florida.
- Once the president of the company has been advised that a hurricane watch has been issued for the South Florida area by the National Hurricane Center, it is he who has the authority and will make the decision to implement our Evacuation Plan.
- In order to be fully informed of any developments relating to the hurricane, there is an Evacuation Team member who is responsible for monitoring any information, recommendations or updates released by the Miami-Dade Office of Emergency Management and the Emergency Operations Center. This team member is also responsible for monitoring the EOC's Evacuation Zone Map.

EXHIBIT 3.6 (page 3 of 5)

NOV-06-2001 05:46 PM BOUCHER BROTHERS MGMT. 5055383289

P. 03

- Within minutes after our Evacuation Plan is called into effect, the Director of Operations for the Lummus Park, Ocean Terrace, and Open Space Park is contacted. The Director of Operations then contacts the Boucher Brothers Site Managers with the decision to evacuate. The Property Managers then contact all Boucher Brothers Staff under their supervision and inform them that the Evacuation Plan is in effect.
- Within 15 minutes after receiving word that we are evacuating, the Site Managers immediately close down all concessions where beach rentals (lounge chairs, beach umbrellas, cabanas, towels, etc.) and sales (skin care lotions, beach toys, rafts, etc.) operations take place.
- In anticipation of inclement weather, our water sports equipment (waverunners, kayaks, etc.) would typically already be in storage off the beach on a day of a hurricane watch. For safety reasons, Boucher Brothers Management does not operate water sports on days when the ocean is rough and the winds are too strong. On a day of a hurricane watch, there would not be a need to move water sports equipment to an off-beach location because the equipment would already be there.
- Within 30 minutes after the Evacuation Plan is called into effect, one of the Boucher Brothers is responsible for contacting Anchor Towing. The Boucher Brothers Management has an agreement with Anchor Towing, a tow truck company located at 1560 NE 131 Street, in Miami, Florida. Per our agreement, Anchor Towing will systematically work with us to move our equipment off the beach in the event of a hurricane watch. It is understood that this tow truck company will meet our needs and assist us in having all equipment off the beach within 6-7 hours.
- Additionally, the Boucher Brothers own 4 flat bed trailers which will aid in the transporting of equipment off the beach in case of a hurricane watch. These trailers will be used to move the lounge chairs, beach umbrellas, and cabanas from the beach to storage area. These trailers are normally kept in a storage location at the Holiday Inn South Beach Hotel, 2201 Collins Avenue, in Miami Beach, Florida. The chairs, umbrellas and cabanas will start to get transported off the beach within 45 after the Evacuation Plan is put in effect. This process will take approximately 3 to 4 hours.

EXHIBIT 3.6 (page 4 of 5)

NOV-06-2001 03:47 PM BOUCHER BROTHERS MNGMT. 5055383288

P. 04

- The Boucher Brothers Management has several storage facilities in different properties along Miami Beach. We have storage areas and secured parking garages at our disposal at The Fontainebleau Hilton Hotel, Holiday Inn South Beach Hotel, and the Loews Hotel. It is to these storage areas where we will bring and keep all our beach equipment during a hurricane watch.
- Aside from moving the chairs, umbrellas, cabanas, and water sports equipment off the beach, we will also move all the on-beach storage facilities and work/concession huts. Moving the huts will typically start to take place within 1 hour after the Evacuation Plan is put into effect. This process will take from 4 to 5 hours. The huts will be moved to one of the Boucher Brothers Management off-beach storage locations mentioned above.
- The Boucher Brothers Staff is not only responsible for assisting in the moving of all beach equipment during a hurricane watch evacuation, but also of informing all beach patrons of the situation. Once all sales/rental operations are shut down, Boucher Brothers staff and Evacuation Team members will advise the people on the beach that, for their safety, they should leave and evacuate the beach area. This will typically start to take place within 15 after Evacuation Plan is implemented and will continue throughout the entire evacuation process, which will take less than 8 hours.
- During the evacuation process, Boucher Brothers Management staff at Lummus Park, Ocean Terrace, and North Open Space Park will be supervised and provided with guidance by their respective Site Managers, and the Site Managers will accordingly be supervised by the Director of Operations for those properties. The Director of Operations will be under the direct supervision of the Boucher Brothers.

EXHIBIT 3.6 (page 5 of 5)

Apr 26 05 03:50p
Apr 07 05 07:39a

Boucher Brothers

305-538-3288

p. 2

p. 1

APR-25-2005 18:02

TOE JAM FILM/PICTUR02PERF

P.02/02

TOE JAM FILMS

150 NW 21ST STREET, MIAMI FL 33137
PH(305)759-0449 FAX(305)759-9945

To whom it may concern:

I acknowledge the paragraph below from an agreement between Boucher Brothers and the City of Miami Beach and the timing relating to the issuance of a Hurricane Warning.

This is to notify you that that the Boucher Brothers have an agreement with Toe Jam Films to utilize our warehouse for the storage of their Beach equipment during times of Hurricane Warnings and Hurricanes.

Our 18,000 square foot warehouse is located at:

150 NW 21st Street

Miami, Florida

Please call me should you have any questions.

Sincerely,



Judd Allison

000-25-2005 05:53PM FAX:

ID:

PAGE: 002 R=100%

EXHIBIT 4.3

Minimum Guarantee RFP Year 1					Guarantee (Years 2-5)				
Description	Monthly Percentage	Yearly Adjustment	Monthly Minimum Guarantee	Yearly Minimum Guarantee	Year 2 Guarantee	Year 3 Guarantee	Year 4 Guarantee	Year 5 Guarantee	Total Guarantee
Food & Beverage	15%	See Schedule Below	9,375	112,500	118,125	124,031	130,233	136,744	621,634
		750,001 To 1,000,000	16%						
		1,000,001 To 1,250,000	17%						
		1,250,001 To 1,500,000	18%						
		1,500,001 To 1,750,000	19%						
		1,750,001 To 2,000,000	20%						
		2,000,001 To 2,250,000	21%						
		2,250,001 To 2,500,000	22%						
		2,500,001 To 2,750,000	23%						
		2,750,001 To 3,000,000	24%						
		3,000,001 To 3,250,000	25%						

EXHIBIT 6 (page 1 of 3)

**CITY OF MIAMI BEACH
BOUCHER BROTHERS MIAMI BEACH, LLC
AGREED-UPON PROCEDURES**

1. Inquire of management and obtain and review documentation on the nature of the company's business and the factors that affect sales. Inquire about and document any major changes made during the period.
 - a. Review procedures for recording sales for all sources of beachfront rental income.
 - b. Obtain the operating policies and procedures from the concessionaire.
 - c. Interview key company representatives to determine procedures used.
 - d. Observe the utilization and effectiveness of the procedures through quarterly site visits to beach concession locations.

2. Test to determine that the concessionaire maintained proper internal controls and documentation to support the reported gross receipts figure for each open and closed section.
 - a. Document the procedures, if any, for determining how sections are recorded as open and closed.
 - b. For ____ months, test manual *Open and Closed Sections* sheet to *Daily Rental* sheets for ____ days to determine if for sections opened revenues are recorded and that for closed sections, proper supervisory approval is evidenced. Agree earned revenues to entries on master *Consolidated Sales* schedule.
 - c. Determine that all daily rental sheets have been accounted for.
 - d. Verify the notations of "inclement weather" or "special events" for days in which the revenues are unusually low.
 - e. Document the findings.

3. Obtain a *Consolidated Sales* schedule for the year ended _____, prepared in conformity with the concession agreement between the City of Miami Beach and Boucher Brothers Miami Beach, LLC dated October 17, 2001. Recalculate concession fees for the period based on sales per the schedule and the terms of the concession agreement.

4. Review the concession agreement(s) and inquire about major changes, if any, in the definition of which sales are included and excluded from the *Consolidated Sales* schedule.

5. Perform an analytical test of sales by obtaining a schedule summarizing sales by revenue type (i.e. food and beverage, water sports, etc.). Analyze this schedule and critically evaluate explanations for significant variations that are unusual in amount or nature.

6. Obtain or prepare a reconciliation of total sales recorded in the general ledger for the period to the *Consolidated Sales* schedule provided to the City of Miami Beach. Also, obtain or prepare an analysis of sales summarized by revenue type. Perform the following procedures:
 - a. Test the analysis by selecting a few categories, and compare the amounts shown with those recorded in the sales schedule. Document the items selected for testing. Agree the sales schedule balances to the general ledger.

EXHIBIT 6 (page 2 of 3)

- b. Review the analysis, and identify any unusual trends or variations within the period or the prior period.
 - c. Obtain sound business reasons for large or unusual variations in the amounts included in the analysis.
7. Scan the accounting records for large and unusual transactions, review evidence and document any findings.
8. Perform a test of sales completeness by applying the following procedures:
- a. Using sales documentation or daily cash register recaps, select 1 (one) day per month throughout the year, including weekdays and weekends. Document the items selected for testing. The sales documentation or daily cash register recaps should include original sales documents (including cash sales and credit card sales), credit memos, etc.
 - b. Agree the summary information on the daily cash register recap or daily collection sheet to the supporting documents (which may be sales tickets, cash register tape, etc.). Determine that details are appropriately reflected on the summary and that all collection sheets have been accounted for.
 - c. Agree the amounts on the daily cash register recaps to proper recording in the sales schedule and general ledger, as appropriate.
 - d. Determine that proper accounting treatment has been applied to these sales transactions.
 - e. Agree deposits per the daily register recap to the daily collection sheets and ultimately to the bank statement.
 - f. Agree sundries to supporting inventory sales sheets.
 - g. Agree water sports/parasailing contract amounts to selected rental agreements.
 - h. Test the propriety of the numerical sequence of the executed water sports agreements/waivers.
 - i. Agree revenues from equipment rentals to Daily Sheets. Check for proper sign-off approval by attendant and supervisor.
 - j. Agree ___ daily deposits to daily revenue sheets and bank statements.
 - k. Foot and cross foot selected ___ months of *Consolidated Sales* schedule and other linked spreadsheets to verify their accuracy.
 - l. Compare total sales for selected months to sales tax returns filed with the applicable taxing jurisdictions.
9. Verify that the concessionaire's rental payments were remitted timely in adherence to the dates designated by the City.
10. Review the products and prices charged by the concessionaire and his sub-concessionaire to determine if the City Manager or his designee has approved them.
- a. Obtain pricing from site visits to beach locations.
 - b. Compare prices to agreement terms. Recalculate any increase to determine if it falls with the limits of the agreement.
 - c. Determine if the city has authorized any price increases and verify if the Company has the authorization in its files.

EXHIBIT 6 (page 3 of 3)

11. Verify the status of operations in both North Shore Open Space Park (inactive) and Ocean Terrace (active).
 - a. Conduct site visit to determine the level of operations.
 - b. Review provided documents to determine the period of activity.
 - c. Discuss and document any variances with Boucher Brothers Management for explanation.
12. Verify that the sub concessionaire has timely paid all resort taxes to the City's Finance Department and ensure the correct calculation of resort tax due.
13. Review the records maintained of all secret shoppers and determine:
 - a. The shoppers' results and corresponding actions taken by management.
 - b. That all locations (including Monty's kiosks) were periodically covered by secret shoppers.
 - c. The frequency and timing of the shoppers on a quarterly basis.
 - d. That all revenues were recorded in the *Consolidated Sales* schedule.
14. Determine and document how management verifies which Monty's kiosks were open in a particular day.
 - a. Agree food and beverage sales to sub concessionaire reports. Agree amounts sold to daily inventory sheets.
 - b. Using sales documentation or daily cash register recaps, select one day per month throughout the year, including weekdays and weekends. Document the items selected for testing. The sales documentation or daily cash register recaps should include original sales documents (including cash sales and credit card sales), credit memos, etc.
 - c. Agree the summary information on the daily cash register recap or daily collection sheet to the supporting documents (which may be sales tickets, cash register tape, etc.). Determine that details are appropriately reflected on the summary and that all collection sheets have been accounted for.
 - d. Agree the amounts on the daily cash register recaps to proper recording in the sales schedule and general ledger, as appropriate.
 - e. Verify the notations of "inclement weather" or "special events" for days in which the revenues are unusually low.
 - f. Select _____ days and ensure that both the attendant and a supervisor sign-off on the applicable daily inventory sheet attesting to the accuracy of the beginning and ending inventory counts as well as any other inventory changes for the day.
 - g. For the days selected above, ensure that the ending inventory agrees to the next days opening inventory. Document any discrepancies.
 - h. Review management's periodic reconciliations of the food and beverage revenues performed by analyzing the inventory reports and cash register tapes. Document any discrepancies and management follow-up.

EXHIBIT 10.2.1

FENCED STORAGE AREA

PENDING

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**CITY OF MIAMI BEACH
COMMISSION ITEM SUMMARY**



Condensed Title:

A Resolution of the Mayor and the City Commission of the City of Miami Beach, Florida authorizing the Administration to issue Request for Qualifications (RFQ) No. 22-04/05 for Professional Building Inspection and Plans Review Services in Various Disciplines on an "as-needed basis" and an "on-going basis", for the Building Department whenever there are vacancies of Inspector and Plans review positions until such time that vacancies are filled with permanent staff; further, extending the term of the existing Professional Services Agreement with the firm, M.T. Causley, Inc. dated March 1, 2004 until the new contracts are awarded.

Issue:

Shall the Mayor and City Commission authorize the issuance of RFQ No. 22-04/05, and extend the Existing Professional Services Agreement with M.T. Causley, Inc. until the new contracts are awarded?

Item Summary/Recommendation:

Request for Qualifications (RFQ) No. 22-04/05 for Building Inspection and Plans Review Services in various professional disciplines to provide professional building inspection and plans review services on an "as-needed basis" and an "on-going basis" for the Building Department whenever there are vacancies of Inspector and Plans Reviewer positions, until such time that vacancies are filled with permanent staff; further, extending the term of the existing Professional Services Agreement with the firm, M.T. Causley, Inc. dated March 1, 2005 until such time that the new contracts are awarded.

The Administration recommends the adoption of the resolution authorizing the issuance of the RFQ and extension of the existing agreement until new contracts are awarded.

Advisory Board Recommendation:

N/A

Financial Information:

Source of Funds:		Amount	Account	Approved
<div style="border: 1px solid black; width: 40px; height: 40px; display: inline-block;"></div> Finance Dept.	1			
	2			
	3			
	4			
	Total			

City Clerk's Office Legislative Tracking:

Hamid Dolikhani

Sign-Offs:

Department Director	Assistant City Manager	City Manager

T:\AGENDA\2005\May182005\Consent\RFQ no. 22-04\05-Professional Building Inspection and Plans Review Services.SUM.doc

AGENDA ITEM C7D
DATE 5-18-05

CITY OF MIAMI BEACH

CITY HALL 1700 CONVENTION CENTER DRIVE MIAMI BEACH, FLORIDA 33139
www.miamibeachfl.gov



COMMISSION MEMORANDUM

To: Mayor David Dermer and
Members of the City Commission

Date: May 18, 2005

From: Jorge M. Gonzalez
City Manager

A handwritten signature in black ink, appearing to read 'Jorge M. Gonzalez for'.

Subject: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE ADMINISTRATION TO ISSUE REQUEST FOR QUALIFICATIONS (RFQ) NO. 22-04/05 FOR PROFESSIONAL BUILDING INSPECTION AND PLANS REVIEW SERVICES IN VARIOUS DISCIPLINES ON AN "AS-NEEDED BASIS" AND AN "ON-GOING BASIS", FOR THE BUILDING DEPARTMENT WHENEVER THERE ARE VACANCIES OF INSPECTOR AND PLANS REVIEW POSITIONS UNTIL SUCH TIME THAT VACANCIES ARE FILLED WITH PERMANENT STAFF; FURTHER, EXTENDING THE TERM OF THE EXISTING AGREEMENT WITH THE FIRM, M.T. CAUSLEY, INC. DATED MARCH 1, 2004 UNTIL THE NEW CONTRACTS ARE AWARDED.**

ADMINISTRATIVE RECOMMENDATION

Adopt the Resolution.

ANALYSIS

In order to address the current staff shortages in the Building Department, the Administration is recommending that Request for Qualifications (RFQ) No. 22-04/05 for building inspection and plans review services in various professional disciplines to provide professional building inspection and plans review services on an "as-needed basis" and an "on-going basis" for the Building Department whenever there are vacancies of inspector and plans review positions, until such time that vacancies are filled with permanent staff. Further, since current vacancies exist, it is also prudent to extend the term of the existing agreement with the firm, M.T. Causley, Inc. dated March 1, 2004 until such time that the new contracts are awarded.

On March 1, 2004, following the approval of the resolution by the City Commission, the Administration entered into a professional services agreement with M.T. Causley, Inc., for an amount not to exceed \$130,000, to provide inspection and plans review services for the Building Department in disciplines where there are vacancies. However, the professional services agreement with M.T. Causley, Inc. has expired as of February 28, 2005, and the amount invoiced to date and the pending invoices are close to its existing \$130,000 limitation.

Currently, there are five (5) inspector and plans review positions vacancies in the Building Department and the vacancies will increase to seven (7) positions by the end of the month, and the recruitment process to fill these positions is well underway. However, some

positions, like the Electrical Inspector, Roofing Inspector or Structural Plans Reviewer, due to the demand in the market and the limited number of qualified individuals available, are very difficult to fill and may require extended period of time before candidates are successfully recruited.

The City may request, accept, and consider proposals for the compensation to be paid under the contract only during competitive negotiations, which will take place after the selection of the firms deemed to be the most qualified to perform the required services. The City may rank firms in order of their competence, qualifications and their competitive rates, and may negotiate agreements with all firms deemed to be qualified. The City may request services on an “as-needed basis” from contracted firms in order of their ranking and based on certified staff availability on-demand, to provide services to the City, on a short notice.

The RFQ seeks proposals from firms employing staff with qualifications in the following specialized areas:

- **Building Inspector** with the State of Florida Certification & meeting the minimum requirements for the Miami-Dade County Board of Rules and Appeals (BORA) Certification;
- **Roofing Inspector** with the State of Florida Certification & meeting the minimum requirements for the Miami-Dade County Board of Rules and Appeals (BORA) Certification;
- **Electrical Inspector** with the State of Florida Certification & meeting the minimum requirements for the Miami-Dade County Board of Rules and Appeals (BORA) Certification;
- **Plumbing Inspector** with the State of Florida Certification & meeting the minimum requirements for the Miami-Dade County Board of Rules and Appeals (BORA) Certification;
- **Mechanical Inspector** with the State of Florida Certification & meeting the minimum requirements for the Miami-Dade County Board of Rules and Appeals (BORA) Certification;
- **Building Plans Examiner** with the State of Florida Certification & meeting the minimum requirements for the Miami-Dade County Board of Rules and Appeals (BORA) Certification;
- **Electrical Plans Examiner** with the State of Florida Certification & meeting the minimum requirements for the Miami-Dade County Board of Rules and Appeals (BORA) Certification;

- **Plumbing Plans Examiner** with the State of Florida Certification & meeting the minimum requirements for the Miami-Dade County Board of Rules and Appeals (BORA) Certification;
- **Mechanical Plans Examiner** with the State of Florida Certification & meeting the minimum requirements for the Miami-Dade County Board of Rules and Appeals (BORA) Certification;
- **Structural Plans Examiner** with the State of Florida Registration a Professional Engineer (PE) in the Structural discipline & meeting the minimum requirements for the Miami-Dade County Board of Rules and Appeals (BORA) Certification.

The price and terms for the contracts will be negotiated after City Commission approves authorization to negotiate. Each proposed contract shall be for a two (2) year term, with two (2) one-year renewal options at the City's option.

The City's existing contracts has expired as of February 28, 2005. The Administration requests that the existing agreement with the firm providing building inspection and plans review services, M.T. Causley, Inc. (See Attachment A) be extended until the new contracts have been approved and executed with the selected firms.

CONCLUSION

The Administration recommends approval of the attached Resolution authorizing the issuance of Request for Qualifications (RFQ) 22-04/05 for Building Inspection and Plans Review Services in various disciplines to provide professional services on an "as-needed basis" and an "on-going basis" whenever there are vacancies in inspector and plans review positions in the Building Department until such time that vacancies are filled with permanent staff; further, extending the term of the existing Professional Services Agreement with the firm, M.T. Causley, Inc., dated March 1, 2004 until the new contracts are awarded.

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement is entered into this 1st day of March 2004, between M.T. Causley, Inc., located at 97 N. E. 15th Street, Homestead, Florida 33030, hereinafter referred to as the "Consultant", and the City of Miami Beach, Florida, located at 1700 Convention Center Drive, Miami Beach, Florida 33139, hereinafter referred to as the "City".

A. TERM OF PROFESSIONAL SERVICES AGREEMENT

The initial term of this Agreement shall commence on the 1st day of March 2004, and end on February 28, 2005.

B. SCOPE OF SERVICES

The Consultant will provide plumbing, electrical or mechanical inspection and plans review services, as outlined in the Florida Building Code, and as referenced herein. There are no specific projects to be designated under the Professional Services Agreement. The Consultant shall be issued Service Orders by the City of Miami Beach Building Department Director as the need for services arises. The Service Order shall cover in detail the scope, time for completion, and the compensation for the work to be accomplished. No services under the Agreement shall be performed by the Consultant prior to the receipt of an appropriate Service Order.

All personnel proposed for performing services under the terms of this Agreement shall meet the Minimum Qualifications in accordance with the Florida Statutes and the Code of the Miami-Dade County. The Minimum Qualifications of the personnel assigned, and the tasks to be performed are as follows:

Minimum Qualifications:

Requires that the individual meet the requirements of Chapter 8, Section 20-32 of the Code of the Miami -Dade County, which is as follows:

A Master Plumber, Electrician or Mechanical having held a certifications by Miami-Dade County Construction Trades Qualifying Board for a period of at least 5 years and having 5 years of field experience under that certification; **OR**

A State Certified Plumbing, Electrical or Mechanical Contractor having held certification by the Florida Construction Industry Licensing Board for a period of at least 5 years and having 5 years experience under that license; **OR**

A Florida Licenses Professional Engineer having obtained a license pursuant to examination in the electrical or mechanical discipline and having had 5 years of field experience under that license.

Provisional / Standard Plumbing, Electrical or Mechanical Inspector & Plans Examiner certifications from the Florida Board of Code Administrators and Inspectors.

The professional license and certifications required herein must be current and in good standing with the Florida Department of Business and Professional Regulation and the Miami-Dade County with no pending complaints.

TASKS:

- Conduct technical field inspections of buildings, equipments and installations during various phases of plumbing construction, installation and operation and grant inspection approvals, if found in compliance with applicable codes and regulations, and provide written comments, if found not in compliance with applicable codes and regulations.
- Review plumbing, electrical or mechanical installation plans, specifications and materials listed for residential and commercial projects, and grant approvals, if found in compliance with applicable codes and regulations, and provide written comments, if found not in compliance with applicable codes and regulations.
- Evaluate alternate methods, procedures, materials and products for compliance with the South Florida Building Code or the Florida Building Code requirements, whichever is applicable, depending on the date of the application or construction.
- Approve or disapprove proposed plans in accordance with the applicable Code and other regulatory requirements and discuss disapproved items with architects, engineers, contractors and/or owner builders to obtain plan changes necessary for approval.
- Render information concerning the applicable Code and make interpretations of its contents. Make decisions as to the feasibility of deviations from the Code under various conditions.
- Perform related work as required.

C. COMPENSATION

The Consultant shall provide the City with monthly invoices for orders received and completed. The total hours charged for review of each project shall be in conformance with the normal industry standards. The effective hourly rate for review shall not exceed sixty five dollars (\$65) per hour, depending on the qualification of personnel assigned.

The City may request additional services, and if any are so requested, they shall be agreed upon by both parties hereto, prior to commencement of same, through a written amendment hereto.

Notwithstanding the preceding paragraphs, Consultant's compensation for services to be rendered during the term of this Agreement shall not exceed the total amount of \$130,000.

D. DESIGNATION OF DUTIES

The Consultant shall receive requests for services to be performed from the City Manager or his designee.

E. CONFIDENTIALITY

Subject to applicable Florida law, the Consultant shall not disclose, publish or authorize others to publish specifications, reports or other information pertaining to the work assigned to the Consultant by the City without the prior written approval of the City. Upon the expiration or termination of this Agreement, the Consultant agrees to return all reports, specifications, data and other material obtained by the Consultant from the City in connection with the performance of this Agreement, and Consultant's obligation to do same shall be a condition precedent to City's obligation to make any outstanding and/or final payment which may be due Consultant.

F. WARRANTY

The Consultant expressly agrees that all of its duties, services and responsibilities under this Agreement shall be performed in accordance with the standard of care normally exercised by consultants performing similar services as those contemplated herein. In addition, Consultant represents that it is experienced and fully qualified to perform the Scope of Services and tasks

contemplated by this Agreement, and that it is properly licensed pursuant to applicable laws, rules and regulations to perform such services.

G. TERMINATION

This Agreement may be terminated for convenience of either party by giving written notice to the other party of such termination, which shall become effective five (5) days following receipt by the other party of the written termination notice. In the event of such termination for convenience by the City, Consultant shall be paid a sum equal to all payments due to it up to the date of termination of Agreement, provided Consultant is continuing to provide all services up to the date of termination, and further that Consultant has complied with the return of all materials pursuant to paragraph E.

H. MISCELLANEOUS

1. It is the mutual intent of the parties that the Consultant shall act strictly in a professional consultant capacity as an independent contractor for all purposes and situations and shall not be considered an agent or employee of the City, and shall not attain any rights or benefits under the Civil Service or Pension Ordinance of the City or any rights generally afforded classified or unclassified employees. Further, it shall not be deemed entitled to Florida Worker's Compensation benefit as an employee of the City, or accumulations of sick leave.
2. In consideration of a separate and specific consideration of \$10.00 and other good and valuable consideration the receipt of which is hereby acknowledged, the Consultant hereby agrees to indemnify, defend and hold the City and its employees, agents and authorized representatives harmless with respect to any and all costs, claims, damages, and liability which may arise out of the performance of this Agreement as a result of any negligent acts, errors or omissions of the Consultant, the Consultant's subconsultants, or any other person or entity under the direction or control of the Consultant.
3. This Professional Services Agreement may only be amended upon the written consent of both parties, as evidenced by authorized amendment, in writing, executed by both parties.
4. This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for the enforcement of same shall be in Miami-Dade County.

I. NOTICES

All notices under the term of this Agreement shall be sent to the following:

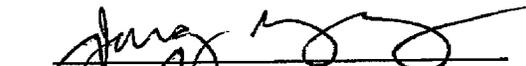
To Consultant: Michael Causley, President
M.T. Causley, Inc.
97 N.E. 15th Street
Homestead, Florida 33030

To City: Phillip Azan, Building Director
Building Department
City of Miami Beach
1700 Convention Center Drive, 2nd Floor
Miami Beach, Florida 33139

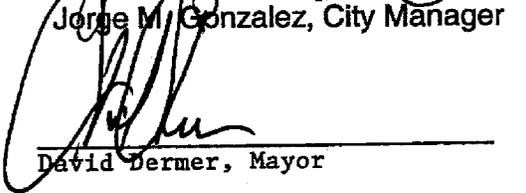
IN WITNESS WHEREOF, the parties have caused this Professional Services Agreement to be executed by their undersigned officials as duly authorized this day.

CITY

CONSULTANT



Jorge M. Gonzalez, City Manager



David Bermer, Mayor



Michael Causley, President
M.T. Causley, Inc.

ATTEST:



Robert Parcher, City Clerk

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**



City Attorney

3-2-04
Date



RESOLUTION TO BE SUBMITTED

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**CITY OF MIAMI BEACH
COMMISSION ITEM SUMMARY**



Condensed Title:

A Resolution Of The Mayor And City Commission Of The City Of Miami Beach, Florida, Approving And Authorizing The Mayor And City Clerk To Execute An Intergovernmental Agreement For Fleet Maintenance And Repair Services Between The City Of Miami Beach, Florida And The Village Of Key Biscayne, Florida.

Issue:

Shall the Mayor and City Commission adopt the Resolution?

Item Summary/Recommendation:

The Village of Key Biscayne has no current fleet service facilities for its small fleet. The Village of Key Biscayne wishes to enter into an Intergovernmental Agreement with the City of Miami Beach to provide fleet maintenance and repair services at the City's Fleet Management facility. The Village of Key Biscayne will pay for all labor and materials for fleet services based on the City of Miami Beach Fleet Management's current published rate schedule. The City's Fleet Management Department does not expect an impact on its current level of customer service to internal customers, anticipates additional revenue, and an increase in its commitment to providing excellent customer service.

The Administration recommends adopting the Resolution.

Advisory Board Recommendation:

n/a

Financial Information:

Source of Funds:		Amount	Account	Approved
<div style="border: 1px solid black; width: 40px; height: 40px; display: inline-block;"></div> Finance Dept.	1			
	2			
	3			
	4			
	Total			

City Clerk's Office Legislative Tracking:

Andrew E. Terpak

Sign-Offs:

Department Director	Assistant City Manager	City Manager
AET	RCM	JMG

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AGENDA ITEM C7E
DATE 5-18-05

CITY OF MIAMI BEACH

CITY HALL 1700 CONVENTION CENTER DRIVE MIAMI BEACH, FLORIDA 33139
www.miamibeachfl.gov



COMMISSION MEMORANDUM

To: Mayor David Dermer and
Members of the City Commission

Date: May 18, 2005

From: Jorge M. Gonzalez
City Manager

A handwritten signature in black ink, appearing to read 'Jorge'.

Subject: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT FOR FLEET MAINTENANCE AND REPAIR SERVICES BETWEEN THE CITY OF MIAMI BEACH, FLORIDA AND THE VILLAGE OF KEY BISCAYNE, FLORIDA.**

ADMINISTRATION RECOMMENDATION

Adopt the Resolution.

ANALYSIS

The Village of Key Biscayne, Florida, a municipal corporation within Miami-Dade County, currently has no fleet service facilities and wishes to enter into an Intergovernmental Agreement with the City of Miami Beach, Florida, providing fleet maintenance and repair service of approximately forty (40) vehicles and two (2) all terrain vehicles through the City of Miami Beach's Fleet Management Department.

The City of Miami Beach Fleet Management Department has the capacity to service and maintain the Village of Key Biscayne Fleet of approximately forty (40) vehicles and Two (2) all terrain vehicles. Fleet Management currently services over 1,175 pieces of rolling stock and has a budget of \$5.7 million. The annual billing to the Village of Key Biscayne is projected to be between \$38,000 and \$50,000 annually.

The servicing of the Village of Key Biscayne's fleet will not impact our current level of customer service to internal customers and its day to day operations. All proposed fleet maintenance and repair services for the Village of Key Biscayne will be performed at the City of Miami Beach Fleet Management facility during regular operating hours. By proposing to offer the City's fleet services to the Village of Key Biscayne, the Fleet Management Department anticipates not only additional revenue, but also an increase in its commitment to providing excellent customer service. Fleet Management will be solely responsible for the scheduling and prioritizing of work to be performed. The City of Miami Beach fleet will always have priority service. In all cases, Fleet Management will make every effort to timely complete work and minimize down time.

As part of the Intergovernmental Agreement, the Village of Key Biscayne will pay for all labor and materials provided by the City of Miami Beach's Fleet Management Department based on the City of Miami Beach-Fleet Management's current published rate schedule. These rates are reviewed quarterly and are subject to change at the City's sole discretion.

The Village, subject to the limitations of Section 768.28, Florida Statutes, agrees to defend, indemnify and hold harmless Miami Beach, its officers, agents, and employees from any and all claims, losses, liabilities, injuries, damages and causes of action which arise out of the performance of services pursuant to the attached Agreement, except for any claim, loss, liability, injury, damages, demands or causes of action resulting from vehicle maintenance or repair service activities done in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. The Village further agrees to name Miami Beach as an additional insured on the Village's Liability program "Garage Operations" coverage.

Attached, please find a draft copy of the Intergovernmental Agreement for Fleet Maintenance and Repair Services between the Village of Key Biscayne, Florida, and the City of Miami Beach, Florida. The Administration requests the Commission approve the substance of this Agreement as presented, subject to finalization of language with reference to indemnification, and signed off by both attorneys. The scope of services will not be affected.

CONCLUSION

The Administration recommends that the Mayor and City Commission of the City of Miami Beach, Florida, adopt the resolution to authorize an Intergovernmental Agreement for fleet maintenance and repair services between the Village of Key Biscayne, Florida, and the City of Miami Beach, Florida.



JMG/RCM/AET/mo

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RESOLUTION NO. 2005-0003

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT FOR FLEET MAINTENANCE AND REPAIR SERVICES BETWEEN THE VILLAGE OF KEY BISCAZYNE, FLORIDA, AND THE CITY OF MIAMI BEACH, FLORIDA.

WHEREAS, the City of Miami Beach and the Village of Key Biscayne are municipal corporations within Miami-Dade County and share common goals and objectives; and

WHEREAS, the Village of Key Biscayne does not have a fleet maintenance facility and wishes to utilize the City of Miami Beach's Fleet Management Department to accommodate its fleet maintenance and repair requirements; and

WHEREAS, the Village of Key Biscayne and the City of Miami Beach mutually agree to all of the provisions in the Intergovernmental Agreement providing fleet maintenance and repair services to the Village of Key Biscayne for an agreed upon sum; and

WHEREAS, all proposed fleet maintenance and repair services for the Village of Key Biscayne will be performed at the City of Miami Beach Fleet Management facility.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission authorize an Intergovernmental Agreement for fleet maintenance and repair services between the Village of Key Biscayne, Florida, and the City of Miami Beach, Florida.

PASSED and ADOPTED this 18th day of February, 2005.

MAYOR

ATTEST:

CITY CLERK

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**



City Attorney 2/18/05
Date

**INTERGOVERNMENTAL AGREEMENT FOR
FLEET MAINTENANCE AND REPAIR SERVICES**

**BETWEEN THE VILLAGE OF KEY BISCAYNE, FLORIDA,
AND THE CITY OF MIAMI BEACH, FLORIDA**

This Intergovernmental Agreement is entered into this _____ day of _____, 2005, by and between the City of Miami Beach, a municipal corporation within Miami-Dade County, Florida (hereinafter "Miami Beach"), and the Village of Key Biscayne, a municipal corporation within Miami-Dade County, Florida (hereinafter "the Village").

WITNESSETH:

WHEREAS, the Village recognizes that the Miami Beach Fleet Management Department is an efficient and effective tool for the Village to use in accomplishing its fleet maintenance and repair needs; and

WHEREAS, the Village is desirous of utilizing Miami Beach's Fleet Management Department, and Miami Beach agrees to provide, through its Fleet Management Department, certain fleet maintenance and repair services to the Village for an agreed upon sum.

SECTION 1 SCOPE OF WORK

Miami Beach, through its Fleet Management Department, shall be the designated provider of fleet management maintenance and repair services for the Village. Miami Beach will be solely responsible for scheduling and prioritizing of work to be performed and will make every effort to timely complete work and minimize down time. Miami Beach shall provide the following general administrative and support services:

- a) Provide trained qualified technicians, supervision and necessary personnel to perform the services required by this Agreement.
- b) Miami Beach shall perform the services required by this Agreement at its Fleet Management facility, located at 140 MacArthur Causeway, Miami Beach, and such office shall be open, generally, from 7:00am to 5:00pm, Monday through Friday, except for legal holidays. Miami Beach will respond to emergency call outs from the Village as needed. A list of the respective contacts and phone numbers will be provided for such purposes; and said list to be provided at the time of execution of this Agreement by the parties hereto.

- c) Maintain an automated equipment inventory, history of vehicle repairs, and any reports of damage or accidents and their associated repairs.
- d) Perform all vehicle preventative maintenance and repairs, as it deems necessary. A safety inspection is included during each visit.
- e) Provide a schedule of maintenance for each vehicle.
- f) Ensure all work performed is consistent with manufacturer and industry standards.
- g) Maintain complete and accurate records for any and all work performed on each vehicle. These records shall be available upon written request by the Village.
- h) Provide access to Miami Beach's suppliers and providers of fleet services for vehicle public safety equipment and automotive parts. This includes, but is not limited to, outside services for vehicle manufacturer's warranty work.

SECTION 2 TERM OF THE AGREEMENT

The term of this Agreement shall be for a period of two (2) years following the last date of execution of this Agreement by the Village and Miami Beach, and may be renewed by mutual agreement of the parties for an additional two (2) years. Either party may terminate this Agreement, without cause and for its convenience, upon sixty (60) days prior written notice to the other party.

SECTION 3 COMPENSATION

- a) The Village shall pay Miami Beach for all services provided pursuant to this Agreement as provided in Exhibit "A" (Rate Schedule), a copy of which is attached hereto.
- b) Technician hourly rates, parts, materials and third party (sublet) work are billed at current rates as, published by Miami Beach Fleet Management. Rates are reviewed quarterly and are subject to change at the sole discretion of Miami Beach.
- c) Repairs over \$500 will be made only with prior written authorization from the Village.
- d) Each month, an invoice will be prepared for all work completed by the last day of the month and submitted to the Village for payment. Payments shall be made within thirty (30) days of the date of the invoice.

SECTION 4 MODIFICATIONS

This Agreement may only be amended in writing, through a written document signed by duly authorized representatives of the signatories to this Agreement.

SECTION 5 NOTICES

All notices, requests, demands, consents, approvals and other communication(s) which are required to be served or given hereunder, shall be in writing and shall be sent by Registered Mail or Certified U.S. Mail, Return Receipt Requested, addressed to the parties to receive such notices as follows:

To the Village: Village of Key Biscayne
Charles R. Press, Chief of Police
88 W. McIntyre Street
Key Biscayne, Florida 33149

To Miami Beach: City of Miami Beach – Fleet Management
Att: Andrew Terpak, Fleet Director
140 MacArthur Causeway
Miami Beach, Florida 33139

Each notice sent in accordance with the requirements of this section shall be deemed effectively given upon actual receipt. Each person designated herein to receive any notice or a copy thereof may change the address at which, or the person to whom notice or a copy thereof is to be delivered, by notice given in accordance with the requirements of this section.

SECTION 6 VENUE AND WAIVER OF JURY TRIAL PROVISION

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. The exclusive venue for any litigation arising out of this Agreement shall be Miami-Dade County, Florida, if in State court, and the U.S. District Court, Southern District of Florida, if in Federal court. BY ENTERING INTO THIS AGREEMENT, THE VILLAGE AND CITY OF MIAMI BEACH EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF THIS AGREEMENT.

SECTION 7 INDEMNIFICATION

Subject to the limitations of Section 768.28, Florida Statutes, the Village shall defend, indemnify and hold harmless Miami Beach, its officers, agents, and

City of Miami Beach - Fleet Services Exhibit "A" Rate Schedule

INTERAGENCY COOPERATION.

Miami Beach and the Village shall cooperate and will recognize the common goals and objectives of this Agreement. Fleet Management shall work to avoid any duplication of services and, where appropriate, shall provide for coordination, referral and assistance to and among any external vendor or sublet for the betterment and efficiency of the Village.

FACILITIES/EQUIPMENT/INVENTORY.

Miami Beach shall provide such facilities, equipment, and inventory of supplies as are necessary to fully provide the required herein. Miami Beach shall maintain all field equipment necessary for its fleet management functions in good repair and maintain all current licenses and registrations required by State and County Law. Such equipment shall be available for inspection by the Village during the term of this Agreement.

RATE Schedule - Sedans and Light Trucks

PM A*	\$24.00	(Filter and 10w-40w or 5w-30w (5 or 6 quarts) Safety inspections
PM A* (Ford Pursuit)	\$29.00	(Filter and 5w-20w semi-synthetic and 7 quarts)
PM B*	\$59.00	PM A expanded (pull wheels inspect brake system & undercarriage. Complete safety inspection)
Mechanic Labor Rate		
Parts @ Cost plus	\$50.00	per hour
Sublet Mark-up		
Fuel @ Plus	20%	
	10%	
	0.08	per gallon

**CITY OF MIAMI BEACH
COMMISSION ITEM SUMMARY**



Condensed Title:

A Resolution Authorizing The Issuance Of A Request For Proposals (RFP) To Determine If It Is In The City's Best Economic Interest To Award A Contract For Dry Cleaning And Laundering Services For City Of Miami Beach Uniformed Employees In Lieu Of Paying Employees A Cleaning Allowance.

Issue:

Shall the City Commission Authorize the Issuance of a RFP?

Item Summary/Recommendation:

The City's contracts with the Fraternal Order of Police (FOP), International Association of Fire Fighters (IAFF) and American Federation of State, County and Municipal Employees (AFSCME) all contain a re-opener clause to discuss a cleaning/laundry service in lieu of paying employees a cleaning allowance, which is currently required in the Communications Workers of America (CWA), IAFF and FOP contracts.

The City seeks to determine the potential savings, if any, via an RFP process. The City may, at its sole and absolute discretion, reject any and all, or parts of any and all proposals, including awarding a contract to cover any or all of the Unions; re-advertise the RFP; postpone or cancel, at any time, the RFP process.

Additionally, if it is determined that it is in the City's best economic interest to pay its uniformed employees a dry cleaning/laundry allowance, then the City may, for its convenience, terminate the services then remaining to be performed at any time without cause by giving written notice to successful vendor of such termination, which shall become effective thirty (30) days following receipt by vendor of such notice.

ADOPT THE RESOLUTION.

Advisory Board Recommendation:

N/A

Financial Information:

Source of Funds:		Amount	Account	Approved
<div style="border: 1px solid black; width: 50px; height: 50px; display: flex; align-items: center; justify-content: center;"> </div> Finance Dept.	1			
	2			
	3			
	4			
	Total			

City Clerk's Office Legislative Tracking:

Gus Lopez, ext. 6641 *[Signature]*

Sign-Offs:

Department Director	Assistant City Manager	City Manager
LG	RI	<i>[Signature]</i> JMG

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AGENDA ITEM C7F
DATE 5-18-05

CITY OF MIAMI BEACH

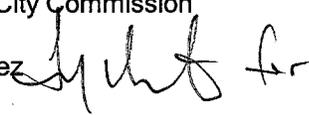
CITY HALL 1700 CONVENTION CENTER DRIVE MIAMI BEACH, FLORIDA 33139
www.miamibeachfl.gov



COMMISSION MEMORANDUM

To: Mayor David Dermer and
Members of the City Commission

Date: May 18, 2005

From: Jorge M. Gonzalez 
City Manager

Subject: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE ISSUANCE OF A REQUEST FOR PROPOSALS (RFP) TO DETERMINE IF IT IS IN THE CITY'S BEST ECONOMIC INTEREST TO AWARD A CONTRACT FOR DRY CLEANING AND LAUNDERING SERVICES FOR CITY OF MIAMI BEACH UNIFORMED EMPLOYEES IN LIEU OF PAYING EMPLOYEES A CLEANING ALLOWANCE.**

ADMINISTRATION RECOMMENDATION

Adopt the Resolution.

ANALYSIS

The City's contracts with the Fraternal Order of Police (FOP), International Association of Fire Fighters (IAFF) and American Federation of State, County and Municipal Employees (AFSCME) all contain a re-opener clause to discuss a cleaning/laundry service in lieu of paying employees a cleaning allowance, which is currently required in the Communications Workers of America (CWA), IAFF and FOP contracts.

The City's total annual cleaning allowance is \$361,280, which is distributed as follows: FOP -- \$157,800; IAFF -- \$131,000; and CWA -- \$72,480. The following is that status of the various labor contracts:

AFSCME: Under consideration as a service for those classifications whose duties and responsibilities require the handling or contact with hazardous chemicals (i.e. mechanics, sewer, sanitation).

GSA: There is currently no cleaning allowance in the GSA contract. The City is exploring the possibility for cleaning/laundry service under the same conditions as AFSCME.

IAFF and FOP: The City is currently paying each employee \$50 per month. The City will determine the potential savings if any, via this RFP process.

CWA: The City is currently paying each employee \$40 per month. The City's impasse position is that all uniforms are machine washable, and do not require dry cleaning, therefore, the allowance is not necessary, nor do the classifications meet the "AFSCME" hazardous chemical criteria. However, we still need to benchmark the cost of the cleaning/laundry service versus paying each employee \$40 per month.

The dry cleaning and laundrying scope of services will require the successful vendor to provide the following services:

1. Launder, press and hang ALL uniforms. All items shall be inspected. Loose seams, hems, waist fasteners, buttons, zippers and slight tears (less than 2") shall be repaired, at no additional cost to the City.
2. Make deliveries or have ready for pickup within 48 hours ("routine service") or within 96 hours ("economy service") from the time of pickup or delivery of the uniform(s) to be serviced.
3. Maintain a "Route Book" that indicates all deliveries and pickups made, which will be made available for inspection by the City upon request. All garments returned to the City must be accompanied by an invoice.
4. Provide the address of their facility where the services are performed for inspection by the City.
5. Comply with their applicable Miami-Dade County Pollution Control Ordinance.
6. Obtain and pay for all licenses, permits and inspection fees required to perform dry cleaning and laundrying services and comply with all laws, ordinances, regulations and building code requirements applicable to the services provided.
7. Maintain service facilities located in South Florida (defined as Miami-Dade, Broward, Palm Beach and Monroe Counties).
8. Replace any lost or damaged item with equal quality article or pay to the City the replacement cost.
9. Enclose a complete packing slip or delivery ticket with any items to be delivered.

Pursuant to the City's Local Preference Ordinance, a preference will be given to responsive and responsible Miami Beach-based vendors, who are within five (5) percent of the lowest and best bidder.

An Evaluation Committee (the "Committee"), appointed by the City Manager, shall meet to evaluate each proposal in accordance with the requirements of the RFP. The Committee shall base its recommendations on the following weighted factors:

- a. Cost of services – 40 points;
- b. Ability, capacity and skill of the bidder to provide the services – 30 points;
- c. Character, integrity, reputation, judgment, experience and efficiency of the bidder – 10 points; and
- d. Proven quality of performance on previous contracts for similar services – 20 points;

The City may, at its sole and absolute discretion, reject any and all, or parts of any and all proposals, including awarding a contract to cover any or all of the Unions; re-advertise the RFP; postpone or cancel, at any time, the RFP process.

Additionally, if it is determined that it is in the City's best economic interest to pay its uniformed employees a dry cleaning/laundry allowance, then the City may, for its convenience, terminate the services then remaining to be performed at any time without cause by giving written notice to successful vendor of such termination, which shall become effective thirty (30) days following receipt by vendor of such notice.

CONCLUSION

The Administration recommends that the Mayor and City Commission adopt the attached resolution which recommends the issuance of an RFP to determine if it is in the City's best economic interest to award a contract for dry cleaning and laundry services for City of Miami Beach uniformed employees in lieu of paying employees a cleaning allowance.

T:\AGENDA\2005\May1805\Consent\DryCleaningServicesRFP.doc

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE ISSUANCE OF A REQUEST FOR PROPOSALS (RFP) TO DETERMINE IF IT IS IN THE CITY'S BEST ECONOMIC INTEREST TO AWARD A CONTRACT FOR DRY CLEANING AND LAUNDERING SERVICES FOR CITY OF MIAMI BEACH UNIFORMED EMPLOYEES IN LIEU OF PAYING EMPLOYEES A CLEANING ALLOWANCE.

WHEREAS, the City's contracts with the Fraternal Order of Police (FOP), International Association of Fire Fighters (IAFF) and American Federation of State, County and Municipal Employees (AFSCME), all contain a re-opener clause to discuss a cleaning/laundry service in lieu of paying employees a cleaning allowance, which is currently required in the Communications Workers of America (CWA), IAFF and FOP contracts; and

WHEREAS, the City will determine the potential savings if any, via an RFP process; and

WHEREAS, an Evaluation Committee (the "Committee"), appointed by the City Manager, shall meet to evaluate each proposal in accordance with the requirements of the RFP; and

WHEREAS, the Committee shall base its recommendations on the following weighted factors:

- a. Cost of services – 40 points;
- b. Ability, capacity and skill of the bidder to provide the services – 30 points;
- c. Character, integrity, reputation, judgment, experience and efficiency of the bidder – 10 points; and
- d. Proven quality of performance on previous contracts for similar services – 20 points; and

WHEREAS, the City may, at its sole and absolute discretion, reject any and all, or parts of any and all proposals, including awarding a contract to cover any or all of the Unions; re-advertise the RFP; postpone or cancel, at any time, the RFP process; and

WHEREAS, if it is determined that it is in the City's best economic interest to pay its uniformed employees a dry cleaning/laundry allowance, then the City may, for its convenience, terminate the services then remaining to be performed at any time without cause by giving written notice to successful vendor of such termination, which shall become effective thirty (30) days following receipt by vendor of such notice.

NOW, THEREFORE BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby authorize the issuance of a Request for Proposals (RFP) to determine if it is in the City's best economic interest to award a contract for Dry Cleaning and Laundering Services for City of Miami Beach uniformed employees in lieu of paying employees a cleaning allowance

PASSED AND ADOPTED this _____ day of _____, 2005.

ATTEST:

CITY CLERK

MAYOR

T:\AGENDA\2005\May1805\Consent\Cleaning Reso..doc

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney

5/12/05

Date

**CITY OF MIAMI BEACH
COMMISSION ITEM SUMMARY**



Condensed Title:

A Resolution of the Mayor and City Commission of the City of Miami Beach, Florida, setting a Preliminary Public Hearing for June 8, 2005, in order to consider the merits of a proposed La Gorce Island Neighborhood Conservation District.

Issue:

Shall the Mayor and City Commission approve the resolution setting the Preliminary Public Hearing?

Item Summary/Recommendation:

Pursuant to City Code section 118-705(b)(1) regarding the procedures for adopting specific NCD overlay districts, the Planning Department shall schedule a request before the City Commission to set a preliminary public hearing in order to evaluate the merits of the proposed district and determine whether to continue the NCD designation process.

The Administration recommends approving the resolution to set a preliminary public hearing.

Advisory Board Recommendation:

The Historic Preservation Board formally initiated the NCD adoption process regarding the proposed district during a discussion with representatives from the La Gorce Island Association, Inc., held April 12, 2005.

Financial Information:

Source of Funds:		Amount	Account	Approved
<div style="border: 1px solid black; width: 50px; height: 50px; display: inline-block;"></div> Finance Dept.	1			
	2			
	3			
	4			
	Total			

City Clerk's Office Legislative Tracking:

Jorge G. Gomez, Planning Director/ Reuben N. Caldwell, Senior Planner

Sign-Offs:

Department Director	Assistant City Manager	City Manager

AGENDA ITEM C7G
DATE 5-18-05

CITY OF MIAMI BEACH

CITY HALL 1700 CONVENTION CENTER DRIVE MIAMI BEACH, FLORIDA 33139
www.miamibeachfl.gov



COMMISSION MEMORANDUM

To: Mayor David Dermer and
Members of the City Commission

Date: May 18, 2005

From: Jorge M. Gonzalez
City Manager

A handwritten signature in black ink, appearing to read "Jorge M. Gonzalez".

Subject: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, SETTING A PRELIMINARY PUBLIC HEARING FOR JUNE 8, 2005, PURSUANT TO CODE SECTION 118-705(b)(1), "PROCEDURES FOR THE ADOPTION OF SPECIFIC NCD OVERLAY DISTRICTS", IN ORDER TO CONSIDER THE MERITS OF A PROPOSED LA GORCE ISLAND NEIGHBORHOOD CONSERVATION DISTRICT.**

ADMINISTRATION RECOMMENDATION

The Administration requests that the City Commission set a Preliminary Public Hearing for June 8, 2005, in order to evaluate the merits of a proposed La Gorce Island Neighborhood Conservation District.

BACKGROUND

The proposed district, which encompasses La Gorce Island in its entirety, is generally bounded by the bulkhead line of the Indian Creek waterway to the east, the bulkhead line of Biscayne Bay to the north and to the west, and the bulkhead line of the La Gorce canal to the south.

The La Gorce Island Association, Inc., sponsored two (2) homeowner meetings, held on June 21, 2004, and February 24, 2005, at which the members present recognized a need to conserve certain aspects of the island's historic character. In particular, their discussions focused on methods by which to revitalize the island's signature Royal Palm and Silver Date Palm lined streets as well as preserve its established street vistas. (*Several exhibits depicting the island's character have been included.*) In their endeavor to address these issues, the Association identified the City's recently adopted Neighborhood Conservation District designation as the most appropriate method toward defining and maintaining the island's distinctive character.

The Historic Preservation Board, following a discussion on April, 12, 2005, requested by the Miami Design Preservation League and representatives of the La Gorce Island Association, considered the merits of creating a neighborhood conservation district for the island and voted (6-0) in favor, to initiate the process of adopting a La Gorce Island Neighborhood Conservation District.

Referring to the attached flow chart delineating the procedures for the adoption of a

Neighborhood Conservation District, the preliminary review (step "2" of the "5" step adoption process) requires that staff request a preliminary public hearing before the City Commission.

CONCLUSION

In accordance with City Code section 118-705(b)(1) of the Neighborhood Conservation District enabling ordinance relative to the adoption of a specific NCD, the Planning Department shall schedule a referral request before the City Commission and The City Commission shall hold a preliminary public hearing to consider the merits of the proposed NCD.

Notification of the preliminary public hearing shall be advertised in accordance with City Code section 118-164(2)(b) regardless of acreage and, in addition, all property owners within the proposed district as well as within a 375 ft. radius of the proposed district shall be notified by individual mail notice with a description prepared in plain English, and postmarked not less than (15) days in advance of the hearing.

Attachments:


JMG/TH/JGG/WHC/RNC

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, SETTING A PRELIMINARY PUBLIC HEARING FOR JUNE 8, 2005, PURSUANT TO CODE SECTION 118-705(b)(1), "PROCEDURES FOR THE ADOPTION OF SPECIFIC NCD OVERLAY DISTRICTS", IN ORDER TO CONSIDER THE MERITS OF A PROPOSED LA GORCE ISLAND NEIGHBORHOOD CONSERVATION DISTRICT.

WHEREAS, the City Commission adopted a Neighborhood Conservation District (NCD) enabling ordinance toward addressing the unique planning issues impacting certain neighborhoods within the City; and

WHEREAS, the La Gorce Island Association, Inc., at two (2) homeowner meetings held on June 21, 2004, and February 24, 2005, recognized the need to conserve certain aspects of the island's historic streetscape and development pattern and identified the City's NCD designation as the most appropriate method to address these issues; and

WHEREAS, the Historic Preservation Board following a discussion held April, 12, 2005, with representatives of the La Gorce Island Association, Inc., relative to creating a neighborhood conservation district for the island, voted (6-0) in favor, to initiate the process of adopting a La Gorce Island Neighborhood Conservation District; and

WHEREAS, in accordance with Miami Beach City Code section 118-705(b)(1) of the NCD enabling ordinance, the Planning Department shall schedule a request before the City Commission to set a preliminary public hearing in order to consider the merits of the proposed NCD and determine whether to continue the designation process.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND THE CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that a preliminary public hearing regarding the proposed La Gorce Island NCD shall be held on June 8, 2005, and the Clerk is hereby directed to publicly notice such hearing in accordance with Miami Beach City Code section 118-705(b)(2).

PASSED and ADOPTED this ___ day of _____, 2005.

ATTEST:

Mayor David Dermer

City Clerk

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney

5-5-05

Date

La Gorce Island Association, Inc.

Resolution for Designation of La Gorce Island as a "Neighborhood Conservation District"

4 May 2005

WHEREAS, the La Gorce Island Association, Inc. called for a Special Meeting of the Board of Directors and Homeowners of La Gorce Island ("LGI" hereafter) on 21 June 2004 for the purpose of discussing and reviewing the possible designation of LGI as a Neighborhood Conservation District ("NCD" hereafter) pursuant to that certain proposed City of Miami Beach Ordinance dated January 2004 (in "Draft Form" at such time);

Moreover, at the meeting, Mr. Victor Diaz, resident of LGI and Chairman of the City of Miami Beach Planning Board made a presentation which was followed by a discussion and then by a call for a show of hands resulting in the overwhelming majority (*including developer and owner of 94 La Gorce Circle*) demonstrating a desire to pursue the NCD process for LGI. Objections were noted by only three (3) of the many residents in attendance that evening.

WHEREAS, the LGI Association, Inc. had been made aware of the passage of the aforementioned City of Miami Beach Ordinance (No. 2004-3457) in September 2004 and it subsequently noticed the NCD matter as an agenda item for its upcoming LGI Annual Membership Meeting held 24 February 2005; and,

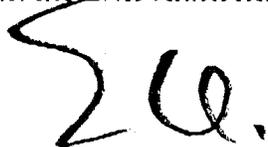
Moreover, at this meeting which was very well-attended by the membership, including some who had opposed the matter previously, and there were no objections whatsoever noted for the possible designation of LGI as an NCD.

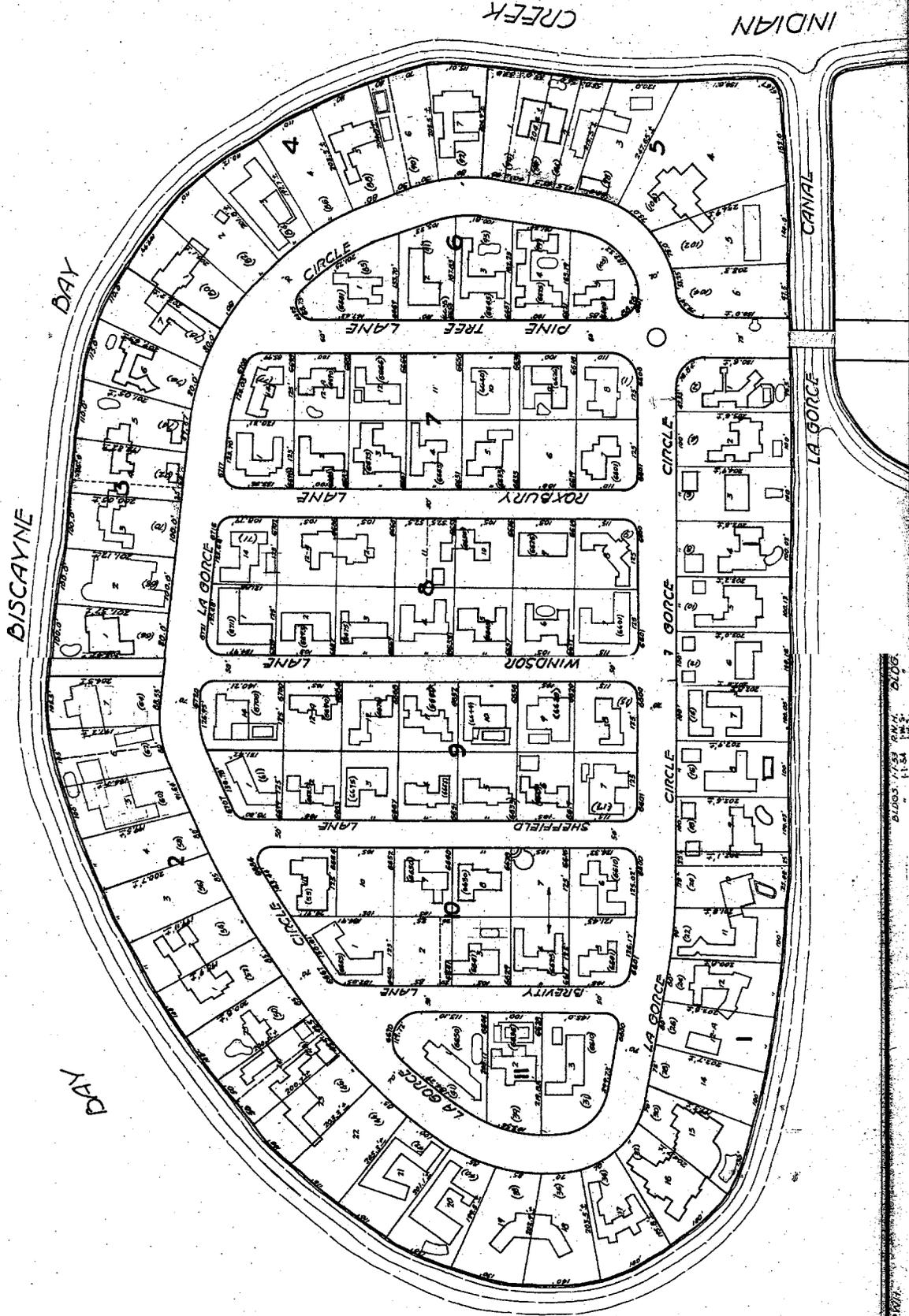
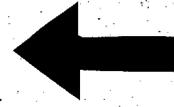
WHEREAS, the members of the La Gorce Island Association, Inc. have expressed an interest in the designation process and the ability to participate in the workshops to implement the NCD,

NOW THEREFORE, THE BOARD OF DIRECTORS OF LA GORCE ISLAND ASSOCIATION, INC. HEREBY ADOPTS AND APPROVES THE FOLLOWING RESOLUTION:

RESOLVED, that the NCD process as initiated by the City of Miami Beach Historic Preservation Board on 12 April 2005 be hereby approved for the designation of La Gorce Island as a Neighborhood Conservation District under City of Miami Beach Ordinance No. 2004-3457 so that the NCD process can enable workshops and the implementation of an NCD deemed appropriate by the members of the La Gorce Island Association, Inc. and the homeowners of La Gorce Island.

LA GORCE ISLAND ASSOCIATION, INC.

By: 
Esther Egozi Choukroun, President



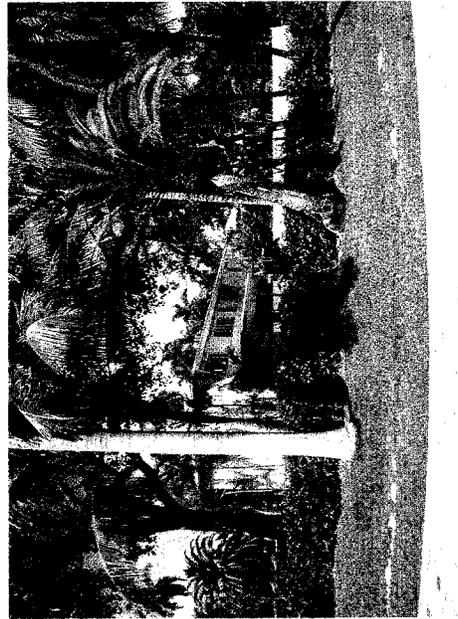
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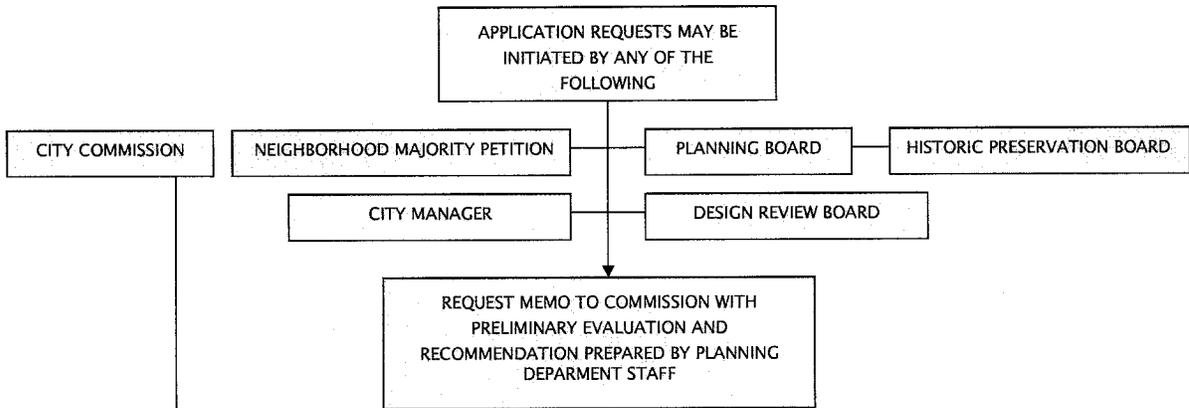




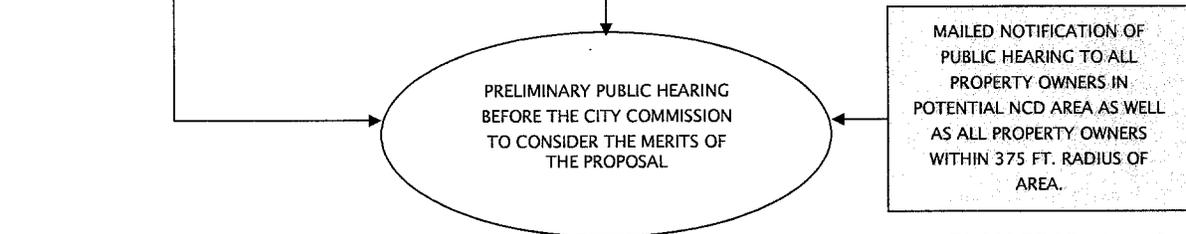
PROCEDURES FOR ADOPTION OF A NEIGHBORHOOD CONSERVATION DISTRICT

September 8, 2004

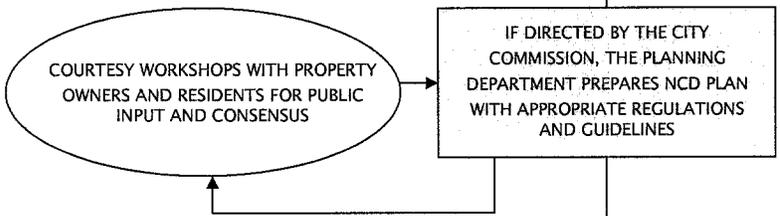
(1) ----- REQUESTS



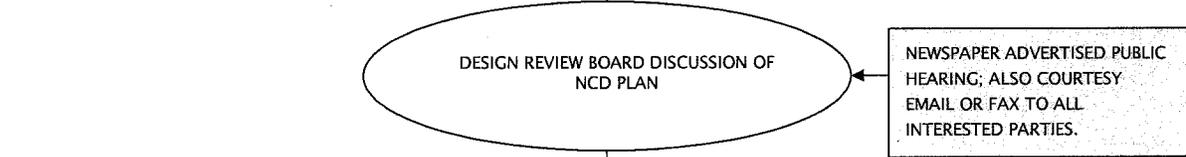
(2) ----- PRELIMINARY REVIEW



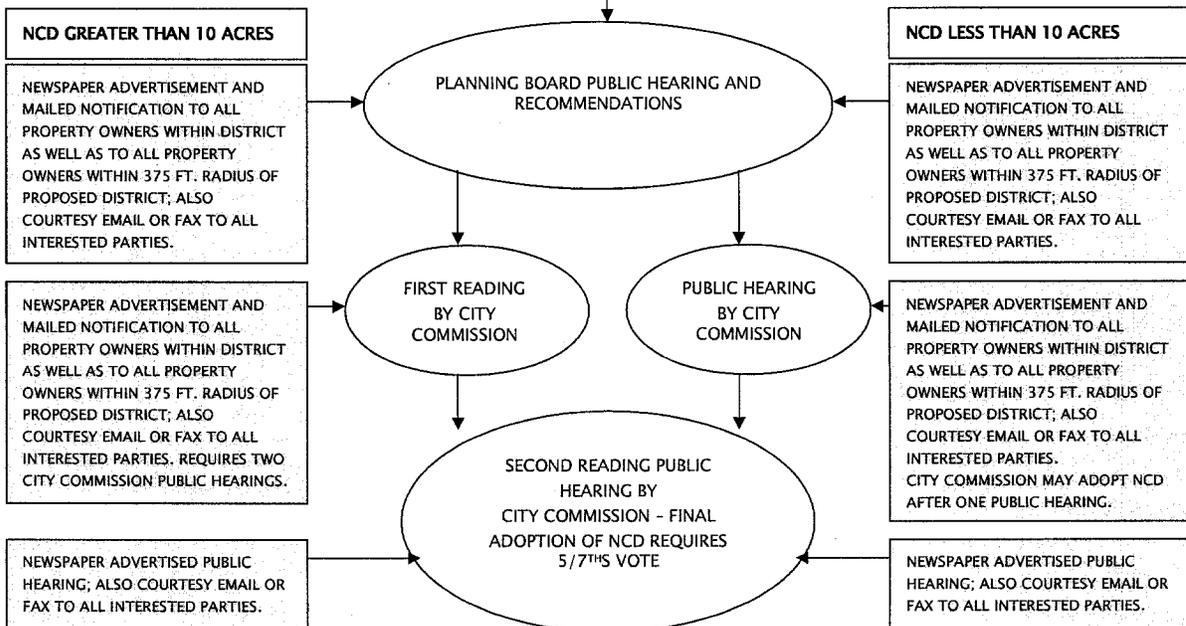
(3) ----- PLAN PREPARATION



(4) ----- DRB DISCUSSION



(5) ----- FINAL ADOPTION



**CITY OF MIAMI BEACH
COMMISSION ITEM SUMMARY**



Condensed Title:

A Resolution authorizing the Mayor or his designee, and the City Clerk to execute a Professional Services Agreement between the City of Miami Beach and the State Attorney's Office for the 11th Judicial Circuit in and for Miami-Dade County for criminal prosecution of local code and ordinance violations.

Issue:

Shall the City Commission execute a Professional Services Agreement between the City of Miami Beach and the State Attorney's Office for the 11th Judicial Circuit in and for the Miami-Dade County for criminal prosecution of local code and ordinance violation?

Item Summary/Recommendation:

Recent amendments to Chapter 27, Florida Statutes, require municipalities to be financially responsible for the costs of prosecuting local code and ordinance violations when such prosecutions are not ancillary to a State Statute charge. In an effort to meet this requirement, the Miami Beach Police Department (MBPD) is requesting to enter into an agreement with the State Attorney's Office of the 11th Judicial Circuit, to reimburse their Agency for the prosecution of the above described violations at a rate of \$50 per hour. The adoption of this Resolution authorizing this agreement with the State Attorney's Office will ensure the continued lawful prosecution of these violations which will facilitate in protecting the health, safety and welfare of the residents and visitors of the City of Miami Beach. Although the rate to prosecute is \$50 per hour, the State Attorney's Office has indicated that they typically handle, on average, three (3) cases per hour, reducing the hourly rate to approximately \$17 per arrest. At a rate of \$17 per arrest for the State Attorney's Office to prosecute, the annual cost is projected to be \$51,000. The MBPD is requesting this amount for fiscal budget year 2005/2006.

The Administration recommends approving the resolution.

Advisory Board Recommendation:

N/A

Financial Information:

Source of Funds:		Amount	Account	Approved
<div style="border: 1px solid black; width: 50px; height: 50px; display: inline-block;"></div> Finance Dept.	1			
	2			
	3			
	4			
	Total			

City Clerk's Office Legislative Tracking:

Michael Gruen, Police Department

Sign-Offs:

Department Director	Assistant City Manager	City Manager

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AGENDA ITEM C7H
DATE 5-18-05

CITY OF MIAMI BEACH

CITY HALL 1700 CONVENTION CENTER DRIVE MIAMI BEACH, FLORIDA 33139
www.miamibeachfl.gov



COMMISSION MEMORANDUM

To: Mayor David Dermer and
Members of the City Commission

Date: May 18, 2005

From: Jorge M. Gonzalez
City Manager

A handwritten signature in black ink, appearing to read "Jorge".

Subject: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE MAYOR OR HIS DESIGNEE, AND THE CITY CLERK TO EXECUTE A PROFESSIONAL SERVICE AGREEMENT BETWEEN THE CITY OF MIAMI BEACH, FLORIDA AND THE STATE ATTORNEY'S OFFICE FOR THE 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA FOR CRIMINAL PROSECUTION OF LOCAL CODE AND ORDINANCE VIOLATIONS.**

ADMINISTRATION RECOMMENDATION

Adopt the Resolution.

ANALYSIS

Recent amendments to Chapter 27, Florida Statutes, require municipalities to be financially responsible for the costs of prosecuting local code and ordinance violations punishable by incarceration when such prosecutions are not ancillary to a State Statute charge.

In an effort to meet this requirement, the Miami Beach Police Department (MBPD) is requesting to enter into an agreement with the State Attorney's Office of the 11th Judicial Circuit to reimburse their Agency for the prosecution of the above described violations at a rate of \$50 per hour. Articles of the agreement are described in detail: Services, Terms, Payment Schedule, Responsibilities, Reporting, Indemnification, Termination, Service Charges, and Non-Discrimination.

Although the rate to prosecute is \$50 per hour, the State Attorney's Office has indicated that they typically handle, on average, three (3) cases per hour, reducing the hourly rate to approximately \$17 per arrest. At a rate of \$17 per arrest for the State Attorney's Office to prosecute, the annual cost is projected to be \$51,000. The MBPD is requesting this amount for fiscal budget year 2005/2006.

The adoption of this Resolution authorizing this agreement with the State Attorney's Office will ensure the continued lawful prosecution of these violations which will facilitate in protecting the health, safety and welfare of the residents and visitors of the City of Miami Beach.

DWD/MG

T:\AGENDA\2005\May1805\Regular\Commission Memo City of Miami Beach & SAO.doc

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH FLORIDA, AUTHORIZING THE MAYOR OR HIS DESIGNEE, AND THE CITY CLERK TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF MIAMI BEACH, FLORIDA AND THE STATE ATTORNEY'S OFFICE FOR THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA FOR CRIMINAL PROSECUTION OF LOCAL CODE AND ORDINANCE VIOLATIONS

WHEREAS, Miami-Dade County and the City of Miami Beach have enacted various codes and ordinances, providing for criminal penalties upon violation, which assist in protecting the health, safety and welfare of the residents and visitors of the City of Miami Beach; and,

WHEREAS, the enforcement of these codes and ordinances, and the prosecution of the violators of these codes and ordinances, assists in ensuring a superior quality of life for the residents and visitors of the City of Miami Beach and to maintain and improve the health, safety, and welfare of this community; and,

WHEREAS, recent amendments to Chapter 27, Florida Statues, require municipalities to be financially responsible for the costs of prosecuting local code and ordinance violations when such prosecutions are not ancillary to a state charge; and,

WHEREAS, §§27.02 and 27.34, Florida Statutes, authorize the State Attorney to prosecute municipal ordinance violations punishable by incarceration if ancillary to state prosecution or, if not ancillary to state prosecution, when the State Attorney contracts with the City for reimbursement;

NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor, or his designee, and City Clerk are authorized to execute the attached Agreement for Reimbursement to the State for Costs of State Attorney Prosecution of Certain Criminal Violations of City of Miami Beach and Miami-Dade County Codes and Ordinances, for the purpose providing State Attorney prosecution of local code and ordinance violations.

PASSED and ADOPTED this _____ day of _____, 2005.

MAYOR

ATTEST:

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION:**

CITY CLERK

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[Signature] 4-25-05
City Attorney *[Signature]* Date

AGREEMENT BETWEEN THE CITY OF MIAMI BEACH, FLORIDA AND THE STATE OF FLORIDA, OFFICE OF THE STATE ATTORNEY FOR THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA TO REIMBURSE THE STATE FOR THE COST OF STATE ATTORNEY PROSECUTION OF CERTAIN CRIMINAL VIOLATIONS OF THE CITY OF MIAMI BEACH CODE AND MIAMI-DADE COUNTY CODE

This agreement is entered into this ____ day of _____, 2005, by and between the City of Miami Beach, a municipal corporation of the State of Florida (hereinafter referred to as the “City”) and the Office of the State Attorney for the Eleventh Judicial Circuit of Florida (hereinafter referred to as “State Attorney”).

WHEREAS, the City finds that in order to maintain and improve the health, safety, and welfare of this community, it is necessary to adequately enforce and prosecute violations of the City’s Municipal Code; and

WHEREAS, Section 27.02, Florida Statutes, authorizes the State Attorney to prosecute municipal ordinance violations punishable by incarceration if ancillary to state prosecution or, if not ancillary to state prosecution, when the State Attorney contracts with the City for reimbursement.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I
Services

The State Attorney agrees to prosecute municipal ordinance violations as authorized in Sections 27.02, and 27.34, Florida Statutes. The City agrees to remit, subject to the terms outlined in Article III of this agreement, to the State Attorney the required funds to reimburse for costs associated with the prosecution of violations of the

Municipal Code for the period of July 1, 2004, through September 30, 2005. The State Attorney shall provide such clerical and professional personnel as may be required for the performance of any of the functions of the State Attorney as set forth in this agreement. This agreement does not commit the City to pay for the prosecution of Municipal Code violations ancillary to state prosecution or for the prosecution of municipal ordinance violations not punishable by incarceration.

ARTICLE II
Terms

This agreement shall expire on September 30, 2005, unless terminated earlier pursuant to Article VII of this agreement. Under no circumstances shall the City be liable to continue or extend this agreement beyond this date. This agreement may only be amended in writing, through a document executed by duly authorized representatives of the signatories to this agreement.

ARTICLE III
Payment Schedule

The City agrees to reimburse the State Attorney on an hourly basis for services rendered at a rate of Fifty dollars (\$50) per hour.

On a quarterly basis, the State Attorney shall provide the City with an invoice including, but not limited to, the hours of services rendered, number of cases prosecuted as set forth in this agreement, the court case numbers, police case numbers, police officer identification number, arrest dates, dates the cases are closed, and the total amount due for payment for the previous month.

The City shall remit each payment within ten (10) days after receiving said invoice from the State Attorney.

ARTICLE IV
Responsibilities

The City does not delegate any of its responsibilities or powers to the State Attorney other than those enumerated in this agreement. The State Attorney does not delegate any of its responsibilities or powers to the City other than those enumerated in this agreement.

ARTICLE V
Reporting

All required reports shall be submitted to the:

City of Miami Beach
Jorge Gonzalez
City Manager
1700 Convention Center Drive
Miami Beach, FL 33139

With copies to:

Roberto T. Datorre
Assistant City Attorney
1700 Convention Center Drive
Miami Beach, FL 33139

ARTICLE VI
Indemnification

It is expressly understood and intended that the State Attorney is only a recipient of the reimbursements paid by the City and is not an agent of the City. The respective

parties agree, subject to the provisions of Chapter 768.28 (17), Florida Statutes, that they will hold each other harmless from any claims arising from this agreement.

ARTICLE VII
Termination

Either party may terminate this agreement at any time with or without cause by furnishing written notice to the other party with no less than ninety (90) days notice.

ARTICLE VIII
Service Charges

This agreement is contingent upon all City funding provided, and any interest earned thereon, not being subject to any State service charges or administrative assessments.

ARTICLE IX
Non-Discrimination

The State Attorney agrees to abide and be governed by Title II of the Americans with Disabilities Act of 1990, Title VI and VII, Civil Rights Act of 1964 (42 USC 200d, e) and Title VIII of the Civil Rights Act of 1968, as amended, which provides in part that there will not be discrimination of race, color, sex, religious background, ancestry, or national origin in performance of this contract, in regard to persons served, or in regard to employees or applicants for employment and it is expressly understood that upon receipt of evidence of discrimination, the City shall have the right to terminate said agreement.

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**CITY OF MIAMI BEACH
COMMISSION ITEM SUMMARY**



Condensed Title:

A Resolution authorizing the appropriation of \$205,000 from the Miami Beach share of the County's Fiscal Year 2004-05 People's Transportation Plan (PTP) funds, for the painting of approximately seventy (70) traffic signal posts and mast arms.

Issue:

Shall the City Commission approve \$205,000 of PTP funds to paint City traffic signal posts and mast arms?

Item Summary/Recommendation:

Miami Beach has received its municipal share of PTP funds on a monthly basis, four months in arrears, as follows:

Jan-Sept 2003	\$1,686,079
FY 2003-04	\$2,583,517
FY 2004-05	\$ 694,721 (of a projected \$2.6 million)

For a total of..... \$4,964,317 of which \$4,686,079 have been appropriated by the City for Miami Beach transit and transportation projects, leaving an available balance of \$278,238.

The County installs and maintains traffic signals countywide, including the maintenance of galvanized posts and mast arms. Per Agreement with FDOT and County, the City is responsible for the paint maintenance of painted traffic signal posts and mast arms. Approximately seventy (70) of such post and mast arms are showing extensive paint damage and corrosion, and require prompt attention to avoid further deterioration. Therefore, the Administration recommends the appropriation of \$205,000 in already available PTP funds to perform this priority maintenance project.

Advisory Board Recommendation:

N/A

Financial Information:

Source of Funds:		Amount	Account	Approved
<div style="border: 1px solid black; width: 40px; height: 40px; display: inline-block;"></div> Finance Dept.	1	205,000 PTP	187.8000.312910	
	2			
	3			
	4			
	Total	\$205,000		

City Clerk's Office Legislative Tracking:

Robert Halfhill

Sign-Offs:

Department Director	Assistant City Manager	City Manager

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AGENDA ITEM C7I
DATE 5-18-05

CITY OF MIAMI BEACH

CITY HALL 1700 CONVENTION CENTER DRIVE MIAMI BEACH, FLORIDA 33139
www.miamibeachfl.gov



COMMISSION MEMORANDUM

To: Mayor David Dermer and
Members of the City Commission

Date: May 18, 2005

From: Jorge M. Gonzalez
City Manager

A handwritten signature in black ink, appearing to read 'Jorge M. Gonzalez', written over the printed name.

Subject: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE APPROPRIATION OF \$205,000 FROM THE MIAMI BEACH SHARE OF THE COUNTY'S FISCAL YEAR 2004-05 PEOPLES' TRANSPORTATION PLAN (PTP) FUNDS, FOR THE PAINTING OF APPROXIMATELY SEVENTY (70) MIAMI BEACH TRAFFIC SIGNAL POSTS AND MAST ARMS.**

ADMINISTRATION RECOMMENDATION

Adopt the Resolution.

ANALYSIS

On November 5, 2002, the Miami-Dade County voters approved the levying of an additional 1/2 cent on the sales tax to benefit eligible transportation and transit projects countywide. The proceeds from the collection of these funds are known as the People's Transportation Plan (PTP) Fund. Pursuant to Miami-Dade County Ordinance No. 02-116, twenty percent of the net PTP proceeds during any given fiscal year are distributed to eligible Miami-Dade County municipalities, on a pro-rata share, based on population. At the same time, each recipient municipality is required to utilize at least 20% of their PTP share for local transit projects, and 80% or less for transportation projects, including maintenance services.

Miami Beach has received its share of PTP funds four months in arrears, as follows:

Jan-Sept. 2003	\$1,686,079
FY 2003-04	\$2,583,517
FY 2004-05	\$ 694,721 (from an estimated \$2.672 million)
For a total of	\$4,964,317 to date.

The City has already appropriated \$4,686,079 of the above mentioned funds for the transportation and transit projects shown in the attached two-page PTP Status Report. A balance of \$287,238 in PTP receipts is presently available to fund additional Miami Beach transportation priorities.

Miami-Dade County installs and maintains traffic signals countywide, including the maintenance of galvanized posts and mast arms. When a different treatment such as the painting of the posts and mast arms is requested by the municipality, the maintenance of the paint or other finishing treatments over and above the standard galvanized finish become the responsibility of the municipality. Through Interlocal Agreements with the County or Joint Participation Agreements with the Florida Department of Transportation, the City agreed to maintain the special finish treatment to traffic signal posts and mast arms in several projects built in the past throughout the City. Currently, approximately seventy (70) of such posts and mast arms in Miami Beach are showing extensive paint damage and even corrosion, and require prompt attention to prevent further deterioration.

Therefore, the Administration recommends the appropriation of \$205,000 from the Miami Beach share of the County's Fiscal Year (FY) 2004-05 PTP Fund, for the needed repainting of traffic signal posts and mast arms in Miami Beach.


JG/RM/FB/FV/RH/AJ

Attachments:

- PTP Status Report – 2003-05 Funds Received and Appropriated
- County-Projected FY 2005 Municipal PTP Fund Distribution

PTP STATUS REPORT - Funds Received and Appropriated to Date By Miami Beach

PTP FUNDS RECEIVED BY CITY TO DATE

Collection Period	Amount MB Received	Date MB Received
Projected 04-05 MB Receipts: \$ 2,577,637		
FY 2004-05		
Oct. 2004	\$ 183,748	02/16/2005
November	217,286	03/18/2005
December	293,687	04/02/2005
Jan. 2005		
February		
March		
April		
May		
June		
July		
August		
September		
2005 Totals	\$ 694,721	

Total Receipt Pg. 1 4,269,596

TO-DATE TOTAL: \$ 4,964,317

PTP FUND APPROPRIATIONS BY CITY TO DATE

Appropriations made by City	Appropriation Amount	Resolution No.	Resolution Date	PTP Balance after Encumbr.
FY 2004-05 Appropriations to date:				
ROW Improvs to N Beach Sts.	174,567	2004-25756	12/08/2004	278,238
Prop. Painting of Poles \$205,000			05/18/2005	
				\$ (241,916)
				\$ 694,721
				\$ 452,805

Total Appropriations from Pg. 1 4,511,512

TOTAL APPROP. TO DATE: 4,686,079

PTP STATUS REPORT of Funds Received and Appropriated to Date by Miami Beach
 Municipal Surtax Proceeds / City Revenue Account No. 187.8000.312910

PTP FUNDS RECEIVED BY CITY TO DATE

Collection Period	Amount Received	Date Received
FY 2002-03		
Jan-May '03	\$ 869,477	09/01/2003
June+adjtms	252,479	10/01/2003
July	175,877	11/07/2003
August	178,915	12/01/2003
September	209,331	01/21/2004
2003 Totals:	\$ 1,686,079	

PTP FUND APPROPRIATIONS BY CITY TO DATE

Appropriations made by City	Appropriation Amount	Resolution No.	Resolution Date	PTP Balance after Encumbr.
FY 2002-03 Appropriations:				\$ 1,686,079
EW Operating Budget	\$ 360,000	2003-24325	09/10/2003	1,326,079
HDR Contract-ERTO	159,957	2003-25374	10/15/2003	1,166,122
Washington Ave. Project *	1,166,122	2003-25380	10/15/2003	-
	\$ 1,686,079			

Projected 03-04 MB Receipts: \$ 2,500,000

FY 2003-04	Amount	Date
Oct. 2003	\$ 184,597	02/23/2004
November	195,302	03/08/2004
December	280,743	04/08/2004
Jan. 2004	184,412	05/03/2004
February	199,764	06/01/2004
March	262,428	07/06/2004
April	192,636	07/29/2004
May	200,231	08/27/2004
June	257,398	9/22/2004
July	180,556	10/28/04
August	207,100	11/30/04
September	238,350	12/17/04
2004 Totals:	\$ 2,583,517	

Actual FY 2003-04 MB Receipts: \$ 2,583,517

FY 2003-04 Appropriations to date:	Amount	Resolution No.	Resolution Date	PTP Balance after Encumbr.
EW Operating Budget 03-04	400,000	2003-25355	09/18/2003	2,183,517
Washington Ave. Project *	445,433	2003-25380	01/12/2004	1,738,084
Technical Assistance to Transp	30,000	2004-25629	07/07/2004	1,708,084
BODR-NB Conn. Bike/Ped.Proj.	80,000	"	"	1,628,084
BODR-Dade/MB Neigh. Bike/Ped	120,000	"	"	1,508,084
ROW Improvs. to Ocean Dr.	350,000	"	"	1,158,084
ROW Improvs. to Espanola	400,000	"	"	758,084
ROW Improvs. To 17th Street	400,000	"	"	358,084
Addl. EW Budget 2003-04	100,000	2004-25703.	09/28/2004	258,084
FY 2004-05 Local Shuttle Bdgt	500,000	2004-25705	09/28/2004	(241,916)
FY 2003-04 Approps to date:	\$ 2,825,433			

TODATE TOTAL: \$ 4,269,596

Total Appr. since Inception: \$ 4,511,512

Please see Page 2 for FY 2004-05 PTP

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Estimated Municipal Transportation Surtax Funds Distribution

Projected for FY05

Amount*
\$ 167,000,000

Jurisdiction	Population Apr-03	% Population	20% \$ 33,400,000	20% Transit Share	80% Transportation Share
Aventura	27,241	2.409%	\$804,657	160,931	643,726
Bal Harbour Village	3,312	0.293%	\$97,831	19,566	78,265
Bay Harbor Islands	5,188	0.459%	\$153,246	30,649	122,596
Biscayne Park	3,485	0.308%	\$102,942	20,588	82,353
Coral Gables	43,216	3.822%	\$1,276,534	255,307	1,021,227
El Portal	2,530	0.224%	\$74,732	14,946	59,786
Florida City	8,466	0.749%	\$250,073	50,015	200,058
Golden Beach	930	0.082%	\$27,471	5,494	21,977
Hialeah	233,388	20.640%	\$6,893,923	1,378,785	5,515,139
Hialeah Gardens	20,106	1.778%	\$593,900	118,780	475,120
Homestead	34,989	3.094%	\$1,033,521	206,704	826,817
Key Biscayne	11,100	0.982%	\$327,877	65,575	262,302
Indian Creek Village	31	0.003%	\$916	183	733
Medley	1,130	0.100%	\$33,378	6,676	26,703
Miami	372,920	32.980%	\$11,015,485	2,203,097	8,812,388
Miami Beach	90,486	8.002%	\$2,672,818	534,564	2,138,254
Miami Lakes	24,523	2.169%	\$724,372	144,874	579,497
Miami Shores	10,441	0.923%	\$308,411	61,682	246,729
Miami Springs	13,725	1.214%	\$405,415	81,083	324,332
North Bay Village	6,613	0.585%	\$195,338	39,068	156,270
North Miami	60,069	5.312%	\$1,774,346	354,869	1,419,477
North Miami Beach	42,167	3.729%	\$1,245,548	249,110	996,439
Opa-Locka	15,592	1.379%	\$460,564	92,113	368,451
Palmetto Bay	24,789	2.192%	\$732,229	146,446	585,783
Pinecrest	19,286	1.706%	\$569,679	113,936	455,743
South Miami	10,768	0.952%	\$318,070	63,614	254,456
Sunny Isles Beach	16,198	1.433%	\$478,464	95,693	382,771
Surfside	5,250	0.464%	\$155,077	31,015	124,062
Sweetwater	14,280	1.263%	\$421,809	84,362	337,447
Virginia Gardens	2,348	0.208%	\$69,356	13,871	55,485
West Miami	6,162	0.545%	\$182,016	36,403	145,613
Total Municipal Participation	1,130,729	100.000%	\$33,400,000	6,680,000	26,720,000
Unincorporated	1,215,203				
Total Miami-Dade	2,345,932				

* Estimate based on the December 2004 proforma.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE APPROPRIATION OF \$205,000 FROM THE MIAMI BEACH SHARE OF THE COUNTY'S FISCAL YEAR 2004-05 PEOPLE'S TRANSPORTATION PLAN (PTP) FUNDS, FOR THE PAINTING OF APPROXIMATELY SEVENTY (70) MIAMI BEACH TRAFFIC SIGNAL POSTS AND MAST ARMS.

WHEREAS, on November 5, 2002, the Miami-Dade County voters approved the levying of an additional 1/2 cent on the sales tax to benefit eligible transportation and transit projects countywide; and

WHEREAS, the proceeds from the collection of these funds is known as the Peoples' Transportation Plan (PTP) Fund; and

WHEREAS, Miami-Dade County Ordinance No. 02-116 states that twenty percent of the net PTP proceeds during any given fiscal year, shall be distributed to eligible Miami-Dade County municipalities, on a pro-rata share, based on population; and

WHEREAS, since the PTP fund inception in January 2003, the City has received \$4,964,317 in PTF funds, and has appropriated \$4,686,079 of PTP funds for eligible Miami Beach transit and transportation projects; and

WHEREAS, approximately seventy (70) Miami Beach traffic signal posts and mast arms are showing extensive paint damage and corrosion, and require prompt maintenance by the City, which would cost \$205,000, to prevent further deterioration; and

WHEREAS, the painting of traffic signal mast arms is an eligible, County-sanctioned maintenance activity which is hereby proposed to be funded by the City's transportation share of PTP funds.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby authorize the appropriation of \$205,000 from the Miami Beach share of the County's Fiscal Year 2004-05 People's Transportation Plan (PTP) funds, for the painting of approximately seventy (70) Miami Beach traffic signal posts and mast-arms.

PASSED AND ADOPTED this the _____ day of May _____, 2005.

ATTEST:

CITY CLERK

MAYOR

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

[Handwritten signature]
Secretary

**CITY OF MIAMI BEACH
COMMISSION ITEM SUMMARY**



Condensed Title:

A Resolution authorizing the execution of a Professional Services Agreement with McMahon Associates, in the amount of \$76,015, for the preparation of Conceptual Plan Report for a 16th Street Operational Improvements and Enhancement Project; utilizing \$75,000 in funds previously appropriated for the purpose, and authorizing appropriation of an additional \$1,015 in Concurrency Mitigation funds to cover the negotiated price.

Issue:

Shall the City enter into an Agreement with McMahon Associates for the 16th Street Project?

Item Summary/Recommendation:

The need for the 16th Street Operational Improvement/Enhancements Project came about from increased traffic volumes on 16th Street due to its extension east to Collins Avenue and the opening of the Loews Hotel. The traffic volume increase has been documented and the road classification of 16th Street was upgraded in the latest Federal Roadway Classification update from a local street to an urban collector classification connecting two urban arterials, Alton Road and Collins Avenue. The Project Bank of the Municipal Mobility Plan includes the 16th Street Operational Improvements and Enhancements as MMP Project #33. The most recent actions regarding this project follow:

1. On June 9, 2004, three separate Resolutions under the same Commission Item authorized
 - The execution of an Interlocal Agreement with the MPO and appropriation of \$75,000 in funds (\$45,000 in MPO grant funds and \$30,000 in Concurrency Mitigation/SoBe Funds) for Phase I- Planning Services for the Project;
 - The execution of a Joint Participation Agreement (JPA) with FDOT and appropriation of \$190,000 in funds (\$100,000 in FDOT grant funds, and \$90,000 in Concurrency Mitigation/SoBe funds for Phase II – Design Services;
 - Authorization to issue Request for Qualifications (RFQ) for both phases of the Project.
2. RFQ No. 37-03/04 was issued on August 18, 2004, and eight (8) proposals were received October 8.
3. The Evaluation Committee met twice and submitted the three top-ranked firms of 1) McMahon Associates, 2) Consul Tech Transportation, and 3) Chen & Associates for consideration.
4. Resolution dated January 12, 2005, authorized negotiations with the top-ranked firms, as needed.
5. After three negotiation sessions with the top-ranked firm of McMahon Associates, the Administration was able to reach an agreement at \$76,105. This exceeds the \$75,000 in already appropriated funds by \$1,105.

The Administration recommends approval of the Resolution

Advisory Board Recommendation:

N/A

Financial Information:

Source of Funds:		Amount	Account	Approved
<div style="border: 1px solid black; width: 40px; height: 40px; display: inline-block;"></div> Finance Dept.	1	\$45,000 MPO	303.8000.337705	
	2	\$30,000 CMF	303.8000.337705	
	3	\$ 1,015 CMF	158.8000.341226	
	4			
	Total	\$76,015		

City Clerk's Office Legislative Tracking:

Robert Halfhill

Sign-Offs:

Department Director	Assistant City Manager	City Manager

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AGENDA ITEM C7J
DATE 5-18-05

CITY OF MIAMI BEACH

CITY HALL 1700 CONVENTION CENTER DRIVE MIAMI BEACH, FLORIDA 33139
www.miamibeachfl.gov



COMMISSION MEMORANDUM

To: Mayor David Dermer and
Members of the City Commission

Date: May 18, 2005

From: Jorge M. Gonzalez
City Manager

A handwritten signature in black ink, appearing to read 'Jorge M. Gonzalez'.

Subject: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH McMAHON ASSOCIATES, INC., IN THE AMOUNT OF \$76,015.00 FOR THE PREPARATION OF A CONCEPTUAL PLAN REPORT FOR THE SIXTEENTH STREET OPERATIONAL IMPROVEMENTS/ ENHANCEMENT PROJECT; UTILIZING \$75,000 IN FUNDS APPROPRIATED FOR THIS PROJECT BY RESOLUTION NO. 2004-25589, DATED JUNE 9, 2004; AND PURSUANT TO RESOLUTION NO. 2005-25784, DATED JANUARY 27, 2005, WHICH AUTHORIZED CONTRACT NEGOTIATIONS; AND FURTHER AUTHORIZING THE APPROPRIATION OF AN ADDITIONAL \$1,015 IN CONCURRENCY MITIGATION/SOUTH BEACH FUNDS TO COVER THE NEGOTIATED PRICE.**

ADMINISTRATION RECOMMENDATION

Adopt the Resolution.

ANALYSIS

The need for the 16th Street Operational Improvement/Enhancements Project came about from increased traffic volumes on 16th Street due to its extension east to Collins Avenue and the opening of the Loews Hotel. The traffic volume increase has been documented and the road classification of 16th Street was upgraded in the latest Federal Roadway Classification update from a local street to an urban collector classification connecting two urban arterials, Alton Road and Collins Avenue. The project was developed as part of the Miami Beach Municipal Mobility Plan (MMP) to provide operational improvements and enhancements that allow the roadway to maintain acceptable traffic performance. The Project Bank of the Miami Beach Municipal Mobility Plan (MMP) includes a 16th Street Operational Improvements/Enhancements as MMP Project #33. The envisioned roadway project will ultimately help the City achieve and further some of its transportation, safety, mobility and quality of life goals for the South Beach area.

The most recent actions regarding this project are as follows:

- Resolution No. 2004-25589, dated June 9, 2004, authorized the execution of an Interlocal Agreement with the Metropolitan Planning Organization (MPO) in the amount

of \$75,000, and appropriated \$45,000 in MPO grant funds and \$30,000 in Concurrency Mitigation/South Beach funds for the project's Phase I – Planning Services.

- Resolution No. 2004-25590, dated June 9, 2004, authorized the execution of a Joint Participation Agreement (JPA) with the Florida Department of Transportation (FDOT) in the amount of \$190,000, and appropriated \$100,000 in FDOT grant funds and \$90,000 in Concurrency Mitigation/South Beach funds for the project's Phase II – Design Services.
- Resolution No. 2004-25591, dated June 9, 2004, authorized the issuance of Request for Qualification (RFQ) for the project's Phases I and II, above described.
- RFQ No. 37-03/04 was issued on August 18, 2004, and eight (8) proposals were received on October 8, 2004.
- The City-appointed Evaluation Committee met twice and recommended to the City Manager the three top-ranked firms, in the following order: McMahon Associates, Consul Tech Transportation, and Chen & Associates.
- Resolution No. 2005-25784, dated January 12, 2005, accepted the ranking of qualifications received and authorized negotiations with the top-ranked firm of McMahon Associates.
- After three (3) negotiation sessions, the Administration was able to reach an agreement with McMahon Associates who brought its proposed cost down to \$76,015. This exceeds the initial budget by \$1,015, which funds can be provided by the Concurrency Mitigation Program. Therefore the need for an additional appropriation in the amount of \$1,015.

Attached hereto is the proposed Professional Services Agreement with McMahon Associates, which includes as Exhibit "A" the Scope of Work/Cost Distribution/Timeline (9 months) for Phase I – Planning Services for the 16th Street Operational Improvements and Enhancement Project.


JG/RM/FB/FV/RH/aj

Attachment: Professional Services Agreement (PSA) with McMahon Associates, Inc.
Scope of Services as Exhibit "A" to PSA

**PROFESSIONAL SERVICE AGREEMENT
BETWEEN THE CITY OF MIAMI BEACH, FLORIDA
AND McMAHON ASSOCIATES, INC.**

**FOR THE PROVISION OF TRANSPORTATION PLANNING SERVICES FOR
THE 16TH STREET OPERATIONAL IMPROVEMENTS/ENHANCEMENT PROJECT**

THIS AGREEMENT made and entered into this _____ day of _____, 2005, by and between the **CITY OF MIAMI BEACH, FLORIDA** (hereinafter referred to as City), a municipal corporation, having its principal offices at 1700 Convention Center Drive, Miami Beach, Florida, 33139, and **McMAHON ASSOCIATES, INC.** (hereinafter referred to as Consultant), a transportation engineering and planning firm, which address is 730 NW 107th Avenue, Suite 110, Miami, Florida 33172.

**SECTION 1
DEFINITIONS**

- Agreement:** This Agreement between the City and Consultant.
- City Manager:** The Chief Administrative Officer of the City.
- Consultant:** For the purposes of this Agreement, Consultant shall be deemed to be an independent Consultant, and not an agent or employee of the City.
- Services:** All services, work and actions by the Consultant performed pursuant to or undertaken under this Agreement, as described in Section 2.
- Fee:** Amount paid to the Consultant to cover the costs of the Services.
- Risk Manager:** The Risk Manager of the City, with offices at 1700 Convention Center Drive, Third Floor, Miami Beach, Florida 33139, telephone number (305) 673-7000, Ext. 6435, and fax number (305) 673-7023.

**SECTION 2
SCOPE OF WORK**

The scope of work to be performed by Consultant is set forth in Exhibit "A," entitled "Scope of Services" (Services).

SECTION 3
COMPENSATION

3.1 FIXED FEE

Consultant shall be compensated for the Services, as set forth in Section 2 at an amount not to exceed Seventy Six Thousand and Fifteen and 00/100 Dollars (\$76,015) for the Services set forth in Exhibit "A," hereto.

3.2 INVOICING

Consultant shall submit an invoice upon completion of each of four (4) Study Tasks, which includes the purchase order number and a detailed description of the Services provided.

3.3 METHOD OF PAYMENT

Payments shall be made for services satisfactorily rendered within thirty (30) days of the date of invoice, in a manner satisfactory to, and as approved and received by, the City. Consultant shall mail all invoices to:

City of Miami Beach
Public Works Department
Attn: Fernando Vazquez
1700 Convention Center Drive, 4th Floor
Miami, Florida 33139

SECTION 4
GENERAL PROVISIONS

4.1 RESPONSIBILITY OF THE CONSULTANT

With respect to the performance of the Services, the Consultant shall exercise that degree of skill, care, efficiency and diligence normally exercised by recognized professionals with respect to the performance of comparable Services. In its performance of the Services, the Consultant shall comply with all applicable laws, ordinances, and regulations of the City, Miami-Dade County, State of Florida, and Federal Government.

4.2 PUBLIC ENTITY CRIMES

A State of Florida Form PUR 7068, Sworn Statement under Section 287.133(3)(a) Florida Statute on Public Entity Crimes shall be filed with the City's Procurement Division, prior to commencement of the Services herein.

4.3 DURATION AND EXTENT OF AGREEMENT

The term of this Agreement shall be for a period of one year from the date this Agreement is executed by all parties hereto.

4.4 TIME OF COMPLETION

The Services to be rendered by the Consultant shall be commenced upon receipt of a written Notice to Proceed from the City subsequent to the execution of the Agreement.

4.5 INDEMNIFICATION

Consultant agrees to indemnify and hold harmless the City of Miami Beach and its officers, employees and agents, from and against any and all actions, claims, liabilities, losses, and expenses, including, but not limited to, attorneys' fees, for personal, economic or bodily injury, wrongful death, loss of or damage to property, at law or in equity, which may arise or be alleged to have arisen from the negligent acts, errors, omissions or other wrongful conduct of the Consultant, its employees, agents, sub-consultants, or any other person or entity acting under Consultant's control, in connection with the Consultant's performance of the Services pursuant to this Agreement; and to that extent, the Consultant shall pay all such claims and losses and shall pay all such costs and judgments which may issue from any lawsuit arising from such claims and losses, and shall pay all costs and attorneys' fees expended by the City in the defense of such claims and losses, including appeals. The parties agree that one percent (1%) of the total compensation to the Consultant for performance of the Services under this Agreement is the specific consideration from the City to the Consultant for the Consultant's Indemnity Agreement.

The Consultant's obligation under this Subsection shall not include the obligation to indemnify the City of Miami Beach and its officers, employees and agents, from and against any actions or claims which arise or are alleged to have arisen from negligent acts or omissions or other wrongful conduct of the City and its officers, employees and agents. The parties each agree to give the other party prompt notice of any claim coming to its knowledge that in any way directly or indirectly affects the other party.

4.6 TERMINATION, SUSPENSION AND SANCTIONS

4.6.1 Termination for Cause

If the Consultant shall fail to fulfill in a timely manner, or otherwise violate any of the covenants, agreements, or stipulations material to this Agreement, the City shall thereupon have the right to terminate this Agreement for cause. Prior to exercising its option to terminate for cause, the City shall notify the Consultant of its violation of the particular terms of this Agreement and shall grant Consultant seven (7) days to cure such default. If such default remains uncured after seven (7) days, the City, upon three (3) days' notice to Consultant, may terminate this Agreement and the

City shall be fully discharged from any and all liabilities, duties and terms arising out of/or by virtue of this Agreement.

Notwithstanding the above, the Consultant shall not be relieved of liability to the City for damages sustained by the City by any breach of the Agreement by the Consultant. The City, at its sole option and discretion, shall additionally be entitled to bring any and all legal/equitable actions that it deems to be in its best interest in order to enforce the City's right and remedies against the defaulting party. The City shall be entitled to recover all costs of such actions, including reasonable attorneys' fees. To the extent allowed by law, the defaulting party waives its right to jury trial and its right to bring permissive counter claims against the City in any such action.

4.6.2 Termination for Convenience of City

NOTWITHSTANDING SECTION 4.6.1, THE CITY MAY ALSO, FOR ITS CONVENIENCE AND WITHOUT CAUSE, TERMINATE AT ANY TIME DURING THE TERM HEREOF BY GIVING WRITTEN NOTICE TO CONSULTANT OF SUCH TERMINATION, WHICH SHALL BECOME EFFECTIVE SEVEN (7) DAYS FOLLOWING RECEIPT BY THE CONSULTANT OF THE WRITTEN TERMINATION NOTICE. IN THAT EVENT, ALL FINISHED OR UNFINISHED DOCUMENTS AND OTHER MATERIALS, AS DESCRIBED IN SECTION 2 AND IN EXHIBIT "A", SHALL BE PROPERLY ASSEMBLED AND DELIVERED TO THE CITY AT CONSULTANT'S SOLE COST AND EXPENSE. IF THE AGREEMENT IS TERMINATED BY THE CITY AS PROVIDED IN THIS SUBSECTION, CONSULTANT SHALL BE PAID FOR ANY SERVICES SATISFACTORILY PERFORMED, AS DETERMINED BY THE CITY AT ITS DISCRETION, UP TO THE DATE OF TERMINATION. PROVIDED, HOWEVER, THAT AS A CONDITION PRECEDENT TO SUCH PAYMENT, CONSULTANT SHALL HAVE DELIVERED ANY AND ALL DOCUMENTS, MATERIALS, ETC, TO CITY. AS REQUIRED HEREIN.

4.6.3 Termination for Insolvency

The City also reserves the right to terminate the Agreement in the event the Consultant is placed either in voluntary or involuntary bankruptcy or makes an assignment for the benefit of creditors. In such event, the right and obligations for the parties shall be the same as provided for in Section 4.6.2.

4.6.4 Sanctions for Noncompliance with Nondiscrimination Provisions

In the event of the Consultant's noncompliance with the nondiscrimination provisions of this Agreement, the City shall impose such sanctions as the City, Miami-Dade County, and / or the State of Florida, as applicable, may determine to be appropriate, including but not limited to, withholding of payments to the Consultant under the Agreement until the Consultant complies and/or cancellation, termination or suspension of the Agreement. In the event the City cancels or terminates the Agreement pursuant to this Subsection the rights and obligations of the parties shall be the same as provided in Section 4.6.2.

4.7 CHANGES AND ADDITIONS

Changes and additions to the Agreement shall be directed by a written amendment signed by the duly authorized representatives of the City and Consultant. No alteration, change, or modification of the terms of this Agreement shall be valid unless amended in writing, signed by both parties hereto, and approved by the City Commission of the City.

4.8 OWNERSHIP OF DOCUMENTS

All documents prepared by the Consultant pursuant to this Agreement are related exclusively to the Services described herein, and are intended or represented for ownership by the City. Any reuse distribution, or dissemination of same by Consultant, other than to the City, shall first be approved in writing by the City.

4.9 INSURANCE REQUIREMENTS

The Consultant shall not commence any work pursuant to this Agreement until all insurance required under this Section has been obtained and such insurance has been approved by the City's Risk Manager. The Consultant shall maintain and carry in full force during the term of this Agreement the following insurance:

1. Consultant General Liability in the amount of \$1,000,000.
2. Consultant Professional Liability in the amount of \$200,000.
3. Workers Compensation & Employers Liability as required pursuant to Florida statute.
4. The insurance must be furnished by insurance companies authorized to do business in the State of Florida and approved by the City's Risk Manager.
5. Original certificates of insurance for the above coverage must be submitted to the City's Risk Manager for approval prior to any work commencing. These certificates will be kept on file in the office of the Risk Manager, 3rd Floor, City Hall.
6. The Consultant is solely responsible for obtaining and submitting all insurance certificates for its sub-consultants.

All insurance policies must be issued by companies authorized to do business under the laws of the State of Florida. The companies must be rated no less than "B+" as to management and not less than "Class VI" as to strength by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the City's Risk Manager. Compliance with the foregoing requirements shall not relieve the Consultant of the liabilities and obligations under this Section or under any other portion of this Agreement, and the City shall have the right to obtain from the Consultant specimen copies of the insurance policies in the event that submitted certificates of insurance are inadequate to ascertain compliance with required coverage.

4.9.1 Endorsements

All of Consultant's certificates, above, shall contain endorsements providing that written notice shall be given to the City at least thirty (30) days prior to termination, cancellation or reduction in coverage in the policy.

4.9.2 Certificates

Unless directed by the City otherwise, the Consultant shall not commence any services pursuant to this Agreement until the City has received and approved, in writing, certificates of insurance showing that the requirements of this Section (in its entirety) have been met and provided for.

4.10 ASSIGNMENT, TRANSFER OR SUBCONTRACTING

The Consultant shall not subcontract, assign, or transfer any work under this Agreement in whole or in part, without the prior written consent of the City.

4.11 SUB-CONTRACTORS

The Consultant shall be liable for the Consultant's services, responsibilities and liabilities under this Agreement and the services, responsibilities and liabilities of sub-contractors, and any other person or entity acting under the direction or control of the Consultant. When the term "Consultant" is used in this Agreement, it shall be deemed to include any sub-contractors and any other person or entity acting under the direction or control of Consultant. All sub-contractors must be approved in writing by the City prior to their engagement by Consultant.

4.12 EQUAL EMPLOYMENT OPPORTUNITY

In connection with the performance of this Agreement, the Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex, age, and national origin, place of birth, marital status, physical handicap, or sexual orientation. The Consultant shall take affirmative action to ensure that applicants are employed and that employees are treated during their employment without regard to their race, color, religion, ancestry, sex, age, national origin, place of birth, marital status, disability, or sexual orientation. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or termination; recruitment or recruitment advertising; layoff or termination; rates of pay, or other forms of compensation; and selection for training, including apprenticeship.

4.13 CONFLICT OF INTEREST

The Consultant agrees to adhere to and be governed by the Metropolitan Miami-Dade County Conflict of Interest Ordinance (No. 72-82), as amended; and by the City of Miami Beach Charter and Code, which are incorporated by reference herein as if fully set forth herein, in connection with the Agreement conditions

hereunder.

The Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirectly which should conflict in any manner or degree with the performance of the Services. The Consultant further covenants that in the performance of this Agreement, no person having any such interest shall knowingly be employed by the Consultant. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefits arising therefrom.

4.14 PATENT RIGHTS; COPYRIGHTS; CONFIDENTIAL FINDINGS

Any patentable result arising out of this Agreement, as well as all information, specifications, processes, data and findings, shall be made available to the City for public use.

No reports, other documents, articles or devices produced in whole or in part under this Agreement shall be the subject of any application for copyright or patent by or on behalf of the Consultant or its employees or sub-contractors, without the prior written consent of the City.

4.15 NOTICES

All notices and communications in writing required or permitted hereunder may be delivered personally to the representatives of the Consultant and the City listed below or may be mailed by registered mail, postage prepaid (or airmailed if addressed to an address outside of the city of dispatch).

Until changed by notice in writing, all such notices and communications shall be addressed as follows:

TO CONSULTANT: McMahan Associates, Inc.
Attn: Diana L. Ospina
Senior Project Manager
730 NW 107th Avenue, Suite 110
Miami, Florida 33172
(305) 222-1945, Ext. 105

TO CITY: City of Miami Beach
Attn: Procurement Division
1700 Convention Center Drive
Miami Beach, Florida 33139
(305) 673-7490

Notices hereunder shall be effective:
If delivered personally, on delivery; if mailed to an address in the city of dispatch,

on the day following the date mailed; and if mailed to an address outside the city of dispatch on the seventh day following the date mailed.

4.16 LITIGATION JURISDICTION/VENUE

This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida.

BY ENTERING INTO THIS AGREEMENT, THE CONSULTANT EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

4.17 ENTIRETY OF AGREEMENT

This writing and the Services embody the entire Agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written with reference to the subject matter hereof that are not merged herein and superceded hereby. The Services and the Proposal Documents are hereby incorporated by reference into this Agreement.

4.18 LIMITATION OF CITY'S LIABILITY

The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of \$1,000. Consultant hereby expresses its willingness to enter into this Agreement with Consultant's recovery from the City for any damage action for breach of contract to be limited to a maximum amount of \$1,000.

Accordingly, and notwithstanding any other term or condition of this Agreement, Consultant hereby agrees that the City shall not be liable to the Consultant for damages in an amount in excess of \$1,000 for any action or claim for breach of contract arising out of the performance or non-performance of any obligations imposed upon the City by this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Section 768.28, Florida Statutes.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their appropriate officials, as of the date first entered above.

FOR CITY: **CITY OF MIAMI BEACH, FLORIDA**

ATTEST:

By: _____
City Clerk

Mayor

FOR CONSULTANT:

McMAHON ASSOCIATES, INC.

WITNESS:

By: _____

Print Name

Thomas H. Hall
Senior Project Manager– Office Manager

Attachment: Exhibit "A"

CITY OF MIAMI BEACH
SCOPE OF SERVICES
FOR
PHASE I – CONCEPTUAL PLAN REPORT
FOR A PROPOSED SIXTEENTH STREET OPERATIONAL
IMPROVEMENTS AND ENHANCEMENT PROJECT

I. SCOPE OF WORK METHODOLOGY

McM Associates, Inc. (McM) and its team are pleased to submit the proposed methodology to accomplish the diverse tasks that encompass the Phase I – Conceptual Plan Report for operational improvements and enhancements along Sixteenth Street, from Collins Avenue/A1A to Bay Road. The McM Team prepared this detailed scope of services with the understanding that the City will make use of the results documented in the Conceptual Plan Report to understand and negotiate the various tasks relevant to the Phase II - Design Services for the study corridor.

GOALS AND OBJECTIVES

The main objective of the Phase I - Conceptual Plan Report is to document all the findings and recommendations based on observations and preliminary analysis results from surveys and existing conditions inventories. The Conceptual Plan Report will include a corridor design concept resulting not only from preliminary technical analysis results, but also from input obtained during the various Committee meetings and public workshops. A description of work effort, project schedule and cost estimates for the proposed conceptual plan for corridor improvements and enhancements follows.

TASK 1.1 – DEFINE GOALS AND OBJECTIVES

Subtask 1.1.1 Kickoff Meeting (Consultant and City Staff)

A kickoff meeting between the City Staff and the key personnel from the McM Team will be scheduled to define goals and objectives and discuss in detail the technical approach to the project. Before the kickoff meeting, the McM Team will assemble for an interdisciplinary brainstorming session to prepare and have ready for discussion a comprehensive technical approach to each component of the project, including but not necessarily limited to:

- 1) Briefing on all required field surveys and existing conditions inventory activities.
- 2) Identification of key study issues based on existing conditions.
- 3) Identification of potential study alternatives.
- 4) Preliminary discussions of candidate solutions to issues.
- 5) Identification of additional follow-up needs and review of creative approaches to project issues.

MANHOURS

The projected man-hours required for accomplishing the brainstorming session, coupled with other small-group sessions among Team staff and the meeting between the City staff and McM Key Staff are presented in **Table 1**.

**TABLE 1
PRELIMINARY ESTIMATE OF WORK EFFORT
SUBTASK 1.1.1 KICKOFF MEETING**

DESCRIPTION OF TASK	MAN-HOUR ESTIMATE
<i>1. Team Brainstorming Sessions</i>	
Traffic Group	8
Drainage Group	8
Planning & Architecture Group	8
Surveying & Utility Location Group	8
Geotechnical Group	8
Subtotal	40
<i>2. Meeting with City Staff</i>	
McM Key Staff (3 persons)	6
Subtotal	6
Project Management/Administration (5%)	2
TOTAL	48
McM Team Cost	\$5,520.00

Subtask 1.1.2 Field Surveys and Existing Conditions Inventory

1. Roadway Characteristics Inventory

Physical roadway features or characteristics will be documented from field observations and measurements of the different roadway segments. Standard methods established by Florida Department of Transportation (FDOT) will be followed and the collected data will be summarized and analyzed. Samples of data to be collected include:

- 1) The number and width of roadway lanes, which are key elements in determining existing quality/level of service (LOS) of each transportation mode (auto, bicycle, pedestrian, transit) as well as to plan future improvements and promote a balanced multi-modal transportation system.
- 2) Type and width of shoulders information will be vital aspects for determining accommodation for on-street parking, emergency use, road stability, future widening, etc.

2. Parking Inventory

A comprehensive parking inventory will be conducted to assemble information about the location, capacity and other pertinent characteristics of existing parking spaces at the curb and in off-street areas, including alleys and spaces between buildings. Parking information to be collected includes:

- 1) Number of parking spaces.
- 2) Time limits and hours of operation.
- 3) Ownership (public, private or restricted to employees or customers of a particular building).
- 4) Rates (if any) and method of fee collection.
- 5) Type of regulation at curb spaces (loading zone, passenger zone, taxi zone or bus zone).
- 6) Type of facility (lot or garage).
- 7) Probable degree of permanency (good conditions, poorly maintained, temporary nature, expected to be replaced with new construction, etc).

3. Accident and Crash Reports

An integral part of the data gathering effort will involve the collection of the most recent accident data for the project facility. The McM Team knows that accident severity and frequency are important parameters in determining inadequacies of any facility. In addition, analysis of these parameters will offer a good insight into the need or advisability of providing geometric, operational or other features geared towards the elimination or mitigation of accident potential. Data obtained from the City of Miami Beach Police and FDOT databases for years 2002 through 2004 will be compiled and evaluated.

4. *Drainage Conditions*

The McM Team will conduct a preliminary field review to document the existing condition of the storm water system and identify potential flooding areas. A meeting with Miami-Dade County Department of Environmental Resources Management (DERM) and Public Works will be scheduled to verify the governing agency's water quality criteria, flood protection LOS, and environmental permitting requirements. All the information obtained will be documented and included in the Conceptual Plan Report.

5. *Other Utilities Inventory*

Inventory of surface and overhead utilities and designation of these existing utilities will be conducted and used as a base for preparing survey preliminary drawings. Meetings with the utilities suppliers will be scheduled to corroborate the inventory and investigate planned utilities projects.

6. *Landscaping Inventory*

Knowledgeable personnel will inventory and classify the existing landscaping along the corridor.

7. *Urban Design Opportunities*

The approach to the design implementation of the corridor would be to establish a strong concept of a livable community taking into consideration the mixed-use character of the area and follow through with detailed design. It will be our intent to develop all aspects of the corridor that would include but not necessarily be limited to:

- 1) Conceptual Roadway Corridor Design
- 2) Planting
- 3) Irrigation
- 4) Lighting
- 5) Pedestrian circulation
- 6) Graphics and banners
- 7) Benches, trash receptacles, etc.

8. *Existing Conditions and Findings Documentation*

The observations and results from field surveys and existing condition inventories will be documented and presented to the Team members for a comprehensive evaluation of the existing conditions and characteristics of the study corridor. In this exercise, the McM Team will discuss ideas and develop a clear understanding of what actually exists and what is the most feasible approach for providing operational improvements and enhancements to the Sixteenth Street corridor. Conclusions

resulting from this effort will be documented in an Existing Conditions and Findings Memorandum.

MANHOURS

The projected man-hours required for accomplishing the field surveys and existing condition inventories and documenting findings for the Sixteenth Street corridor project are presented in **Table 2**.

TABLE 2
PRELIMINARY ESTIMATE OF WORK EFFORT
TASK 1.1.2 FIELD SURVEYS AND EXISTING CONDITION INVENTORIES

DESCRIPTION OF TASK	MAN-HOUR ESTIMATE
<i>1. Roadway Characteristics Inventory</i>	12
<i>2. Parking Inventory</i>	8
<i>3. Accident and Crash Reports</i>	24
<i>4. Drainage Conditions</i>	
Site Reconnaissance Visit	8
Existing Data Collection	16
Meeting with Miami-Dade County DERM	4
<i>5. Other Utilities Replacement</i>	
Surface and Overhead Inventory and Designation of Existing Utilities	12
Survey Preliminary Drawings	24
Meeting with Utilities Suppliers	6
<i>6. Landscaping Inventory</i>	
Field Inventory	8
Classification/Documentation	8
<i>7. Urban Design Opportunities</i>	
Visual Analysis	32
Opportunities and Constrains Plan	32
<i>8. Existing Conditions and Findings Documentation</i>	
Existing Conditions and Findings Documentation	40
Project Management/Administration (5%)	12
TOTAL	246
McM Team Cost	\$28,290.00

Subtask 1.1.3 Define Goals and Objectives for the Study Pursuant to Results of the Field Survey and Existing Condition Inventory

The conclusions documented in the Existing Conditions and Findings Memorandum will drive a brainstorming session, which will enable the Team to discuss ideas and develop the matrix of viable conceptual alternatives for the Sixteenth Street corridor. These alternatives will be documented and used as a base for the development of the Corridor Conceptual Plan. At this stage, a Draft Corridor Conceptual Plan Report will be prepared. This report will document the existing conditions, findings and recommendations and the development of the most viable conceptual alternatives.

MANHOURS

The effort required for developing the viable conceptual alternatives pursuant to the results of the surveys and existing condition inventories effort will involve a number of Team staff brainstorming meetings. The projected man-hours are presented in **Table 3**.

**TABLE 3
PRELIMINARY ESTIMATE OF WORK EFFORT
TASK 1.1.3 DEFINE GOALS AND OBJECTIVES PURSUANT TO RESULTS
OF FIELD SURVEYS AND EXISTING CONDITIONS INVENTORY**

DESCRIPTION OF TASK	MAN-HOUR ESTIMATE
<i>1. Team Brainstorming Sessions to Develop Conceptual Alternatives</i>	
Traffic Group	12
Drainage Group	12
Planning & Architecture Group	12
Surveying & Utility Location Group	12
Subtotal	48
<i>2. Documentation</i>	
Draft Corridor Conceptual Plan Report	40
Subtotal	40
Project Management/Administration (5%)	4
TOTAL	92
McM Team Cost	\$10,580.00

TASK 1.2 - DEVELOP SIXTEENTH STREET CORRIDOR CONCEPTUAL PLAN

Subtask 1.2.1 Visioning Session with Technical Committee

A meeting with the City Technical Committee will be scheduled to review the goals and objectives as envisioned by the McM Team, based on the findings from the existing conditions evaluation and the developed viable alternatives.

Subtask 1.2.2 Develop Conceptual Plan Based on Input Received from the Technical Committee

Based on the Visioning Session and existing conditions results, the process of narrowing down the alternatives to the most feasible conceptual plan will be undertaken. This plan will entail a combination of recommended improvements and enhancements including, but not limited to:

- 1) Operational and safety improvements to the corridor, intersections and signalization.
- 2) Reconstruction or milling, resurfacing and striping of roadway.
- 3) Utility relocation.
- 4) Sidewalk.
- 5) Curb and gutter.
- 6) Street lighting.
- 7) Bicycle and pedestrian features.
- 8) Parking facilities.
- 9) Traffic calming devices.
- 10) Landscaping.
- 11) Graphics and banners.

Subtask 1.2.3 Present Conceptual Plan to Transportation and Parking Committee

A meeting with the Transportation and Parking Committee will be scheduled to present the proposed preliminary Corridor Conceptual Plan to reach a consensus and identify the preferred alternatives for the improvements and enhancements along the corridor.

Subtask 1.2.4 Hold Community Workshop No. 1

The first community workshop will be held for residents and other stakeholders to express their concern and priorities. Comments and recommendations obtained during the workshop will be documented and taken into consideration for potential modifications to the plans once they are approved by the City and the participant Committees.

MANHOURS

The effort required to develop the Preliminary Sixteenth Street Corridor Conceptual Plan Report is summarized in **Table 4**.

**TABLE 4
PRELIMINARY ESTIMATE OF WORK EFFORT
TASK 1.2 DEVELOP SIXTEENTH STREET CORRIDOR
CONCEPTUAL PLAN**

DESCRIPTION OF TASK	MAN-HOUR ESTIMATE
<i>Subtask 1.2.1 Meet with Technical Committee</i>	
Traffic Group	3
Planning & Architecture Group	3
Subtotal	6
<i>Subtask 1.2.2 Develop Conceptual Plan</i>	
Develop Initial Concepts (up to 3)	60
Subtotal	60
<i>Subtask 1.2.3 Present Conceptual Plan to Transportation & Parking Committee</i>	
Traffic Group	3
Planning & Architecture Group	3
Subtotal	6
<i>Subtask 1.2.4 Hold Community Workshop No. 1</i>	
Prepare Presentation Materials	20
Key Team Staff Attendance (4)	20
Subtotal	40
Project Management/Administration (5%)	6
TOTAL	118
McM Team Cost	\$13,570.00

TASK 1.3 - DRAFT SIXTEENTH STREET CONCEPTUAL PLAN REPORT

Subtask 1.3.1 Prepare a Draft Conceptual Plan Report for the Project

Based on the input received at the three introductory meetings, a Draft Conceptual Plan Report will be prepared including an executive summary, a report of existing conditions, and the preferred conceptual plan. This Draft Conceptual Plan Report will also include preliminary calculations, review of schedule, a map illustrating all proposed improvements and a summary of the permitting process.

Subtask 1.3.2 Meet with Technical Committee for Draft Conceptual Plan Review

A meeting with the Technical Committee will be scheduled to review the proposed draft of the Preferred Corridor Conceptual Plan and preliminary cost estimates.

Subtask 1.3.3 Presentation/Final Discussion with Transportation and Parking Committee

A final meeting with the Transportation and Parking Committee will be held to present the draft of the preferred Corridor Conceptual Plan and preliminary cost estimates.

MANHOURS

The effort required to develop the Draft Sixteenth Street Conceptual Plan Report is summarized in **Table 5**.

**TABLE 5
PRELIMINARY ESTIMATE OF WORK EFFORT
TASK 1. 3 DEVELOP DRAFT SIXTEENTH STREET CONCEPTUAL PLAN REPORT**

DESCRIPTION OF TASK	MAN-HOUR ESTIMATE
<i>Subtask 1.3.1 Prepare Conceptual Plan</i>	
Develop Preferred Concept	32
Provide Illustrative Street Sections (up to 3)	16
Provide Preliminary Order of Magnitude Quantities	16
Subtotal	64
<i>Subtask 1.3.2 Meet with Technical Committee</i>	
Traffic Group	3
Planning & Architecture Group	3
Subtotal	6
<i>Subtask 1.3.3 Final Presentation to Transportation & Parking Committee</i>	
Traffic Group	3
Planning & Architecture Group	3
Subtotal	6
Project Management/Administration (5%)	4
TOTAL	80
McM Team Cost	\$9,200.00

TASK 1.4 – FINAL SIXTEENTH STREET CONCEPTUAL PLAN REPORT

Subtask 1.4.1 Prepare a Final Conceptual Plan Report for the Project

Based on the final input received from the participant Committees and Community, the Final Conceptual Plan Report for the Project will be prepared. The Conceptual Plan Report will be a comprehensive source to serve as the basis for planning the design phase for the Sixteenth Street Corridor.

Subtask 1.4.2 Review Final Conceptual Plan with City and Applicable Regulatory Agencies

The McM Team will make sure that the Final Conceptual Plan Report includes all the revisions implemented during reviews with the City and regulatory agencies. Three meetings will be scheduled with the City, County and State representatives.

Subtask 1.4.3 Present Final Conceptual Plan at City Commission Meeting for Approval

The McM Team will present the final Conceptual Plan at a City Commission Meeting for approval.

Subtask 1.4.4 Present Approved Final Conceptual Plan to the Metropolitan Planning Organization's (MPO) Transportation Planning Council

Key staff of the McM Team will present the Adopted Conceptual Plan to the MPO Transportation Planning Council.

MANHOURS

The effort required for developing the Final Sixteenth Street final Conceptual Plan Report is summarized in **Table 6**.

TABLE 6
PRELIMINARY ESTIMATE OF WORK EFFORT
TASK 1.4 DEVELOP FINAL SIXTEENTH STREET CONCEPTUAL PLAN

DESCRIPTION OF TASK	MAN-HOUR ESTIMATE
<i>Subtask 1.4.1 Prepare Final Conceptual Plan</i>	
Refine Draft Conceptual Plan	20
Provide Vignette Sketches (up to 3)	12
Prepare Documents for Conceptual Plan Report	8
Subtotal	40
<i>Subtask 1.4.2 Review Final Conceptual Plan with City and Applicable Agencies</i>	
Attend 3 Meetings (City, County, State)	9
Subtotal	9
<i>Subtask 1.4.3 Present Final Conceptual Plan to City Commission</i>	
Prepare Presentation Materials	6
Key Team Staff Attendance (3)	6
Subtotal	12
<i>Subtask 1.4.4 Present Conceptual Plan to MPO-TPC</i>	
Prepare Presentation Materials	6
Key Team Staff Attendance (3)	6
Subtotal	12
Project Management/Administration (5%)	4
TOTAL	77
McM Team Cost	\$8,855.00

II. SUMMARY OF PROPOSED COST ESTIMATE TO COMPLETE PROJECT PHASE I – CONCEPTUAL PLAN REPORT

TABLE 7
SUMMARY OF TOTAL PROPOSED COST ESTIMATE
FOR PROJECT PHASE I – CONCEPTUAL PLAN REPORT

DESCRIPTION OF TASK	MAN-HOUR ESTIMATE
TASK 1.A Define Goals and Objectives	\$44,390
TASK 1.B Existing Conditions Data Collection and Findings	\$13,570
TASK 1.C Development of Preliminary Sixteenth Street Conceptual Plan	\$9,200
TASK 1.D Development of Final Sixteenth Street Conceptual Plan	\$8,855
TOTAL McM Team Cost	\$ 76,015.00

III. PRELIMINARY TIMELINE FOR PROJECT PHASE I – CONCEPTUAL PLAN REPORT

The McM Team agreed that the effort to conduct surveys, tests, data collection, analysis, presentations, and prepare the Final Sixteenth Street Conceptual Plan Report will be conducted within a time period of nine months. The McM Team is prepared to start working on the project as soon as the City provides the McM Team the Notice to Proceed.

TASK 1.1 – DEFINE GOALS AND OBJECTIVES 3 Months

- Subtask 1.1.1 Kickoff Meeting (McM and City Staff)
- Subtask 1.1.2 Field Surveys and Existing Conditions Inventory
- Subtask 1.1.3 Define Goals and Objectives for the Study Pursuant to Results of the Field Survey and Existing Conditions Inventory

TASK 1.2 - DEVELOP 16th St. CORRIDOR CONCEPTUAL PLAN 2 Months

- Subtask 1.2.1 Visioning Session with Technical Committee
- Subtask 1.2.2 Develop a Conceptual Plan, based on input received from the Technical Committee
- Subtask 1.2.3 Present Conceptual Plan to the Transportation and Parking Committee
- Subtask 1.2.4 Hold Community Workshop No. 1

TASK 1.3 - DRAFT 16th St. DRAFT CONCEPTUAL PLAN REPORT 2 Months

- Subtask 1.3.1 Prepare a Draft Conceptual Plan Report
- Subtask 1.3.2 Meet with Technical Committee for Draft Conceptual Plan review
- Subtask 1.3.3 Presentation/Final Discussion with Transportation and Parking Committee

TASK 1.4 – FINAL 16th St. CONCEPTUAL PLAN REPORT 2 Months

- Subtask 1.4.1 Prepare a Final Conceptual Plan Report
- Subtask 1.4.2 Review Final Conceptual Plan with City and Applicable Regulatory Agencies
- Subtask 1.4.3 Present the Final Conceptual Plan at City Commission Meeting for Approval
- Subtask 1.4.4 Presentation of Approved Final Conceptual Plan to the MPO's Transportation Planning Council

RESOLUTION TO BE SUBMITTED

**CITY OF MIAMI BEACH
COMMISSION ITEM SUMMARY**



Condensed Title:

A Resolution approving the proposed final plat of "Meadowood Gardens", a replat of lots 1 through 12, Block 1 and tracts "A-9", "B-9" and "C-9" of Lindisfarne on Fisher Island Section 9, as recorded in plat book 149, page 86 of the public records of Miami-Dade county, Florida, together with a portion of unsubdivided section 10, township 54 South, Range 42 East, City of Miami Beach, Miami-Dade County, Florida.

Issue:

Shall the Mayor and City Commission approve the proposed final plat of "Meadowood Gardens" on Fisher Island?

Item Summary/Recommendation:

In 1952 Gar Wood de-annexed property he owned on Fisher Island from the City of Miami Beach. A portion of Fisher Island, primarily on the northeast portion, which was not owned in 1952 by Gar Wood, is still within City jurisdiction.

In 1993, the City of Miami Beach rezoned this portion of Fisher Island from RM-1, Residential Multi-Family Low Intensity to RM-PRD, Multi-Family Planned Residential Development.

In September 11, 1996, a plat of this area subdividing it into 12 lots with a private road and easements was approved by the City Commission under Resolution # 96-22106. The final plat of this "Lindisfarne on Fisher Island-Section 9" was recorded in Plat Book 149, Page 86 of the Public Records of Miami-Dade County.

The proposed Meadowood Gardens is a replat of the above mentioned "Lindisfarne on Fisher Island-Section 9" subdivision, together with a portion of unsubdivided Section 10, Township 54 South, Range 42 East, owned by Fisher Island Holdings LLC. The purpose of the replat is to eliminate the subdivided parcels and portions of easements created under the previous plat.

Administration recommends approving the Resolution.

Advisory Board Recommendation:

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Financial Information:

Source of Funds:		Amount	Account	Approved
<div style="border: 1px solid black; width: 40px; height: 40px; margin-bottom: 5px;"></div> Finance Dept.	1			
	2			
	3			
	Total			

City Clerk's Office Legislative Tracking:

Robert Halfhill, Public Works 6833

Sign-Offs:

Department Director	Assistant City Manager	City Manager
FFB	RCM	JMG

T:\AGENDA\2005\May\1805\Consent\Meadowood Sum.doc

AGENDA ITEM C7K
DATE 5-18-05

CITY OF MIAMI BEACH

CITY HALL 1700 CONVENTION CENTER DRIVE MIAMI BEACH, FLORIDA 33139
www.miamibeachfl.gov



COMMISSION MEMORANDUM

To: Mayor David Dermer and
Members of the City Commission

Date: May 18, 2005

From: Jorge M. Gonzalez
City Manager

A handwritten signature in black ink, appearing to read "Jorge".

Subject: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING THE PROPOSED FINAL PLAT OF "MEADOWOOD GARDENS", A REPLAT OF LOTS 1 THROUGH 12, BLOCK 1 AND TRACTS "A-9", "B-9" AND "C-9" OF LINDISFARNE ON FISHER ISLAND SECTION 9, AS RECORDED IN PLAT BOOK 149, PAGE 86 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, TOGETHER WITH A PORTION OF UNSUBDIVIDED SECTION 10, TOWNSHIP 54 SOUTH, RANGE 42 EAST, CITY OF MIAMI BEACH, MIAMI-DADE COUNTY FLORIDA.**

ADMINISTRATION RECOMMENDATION

Adopt the Resolution.

ANALYSIS:

Fisher Island was created when the Miami ship channel was dredged in 1905. The island was included within the City limits when Miami Beach was incorporated in 1917. In 1952 Gar Wood, de-annexed the property that he owned on Fisher Island from the City of Miami Beach. The property located primarily on the northeast portion of Fisher Island not owned by Gar Wood at that time, is still within City jurisdiction.

In 1993, the City of Miami Beach rezoned this portion of Fisher Island from RM-1, Residential Multi-Family Low Intensity to RM-PRD, Multi-Family Planned Residential Development.

In September 11, 1996, a plat which subdivided this area into 12 lots with a private road and easements was approved by the City Commission under Resolution #96-22106. The final plat named "Lindisfarne on Fisher Island-Section 9" was recorded in Plat Book 149, Page 86 of the Public Records of Miami-Dade County.

The proposed Meadowood Gardens (See attached Exhibit "A") is a replat of the above mentioned "Lindisfarne on Fisher Island-Section 9" subdivision, together with a portion of unsubdivided Section 10, Township 54 South, Range 42 East, owned by Fisher Island Holdings LLC. The purpose of this replat is to eliminate the subdivided parcels and portions of easements created under the previous plat.

The City has reviewed the proposed plat and required that the subdivision of the property be regulated by Section 142-185(8) of the City Code. Moreover, easements for utilities and access roads for existing properties to the east were identified on this proposed plat.

Water and sewer to this subdivision will be provided and maintained by the Miami-Dade Water and Sewer Department.

RECOMMENDATION:

The Administration recommends the Mayor and City Commission approve the Resolution for the proposed Plat of "Meadowood Gardens", a replat of lots 1 through 12, Block 1 and Tracts "A-9", "B-9" and "C-9" of Lindisfarne on Fisher Island Section 9, as recorded in plat book 149, page 86 of the public records of Miami-Dade County, Florida, together with a portion of unsubdivided section 10, township 54 South, Range 42 East, City of Miami Beach, Florida.

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MEADOWWOOD GARDENS

A RE-PLAT OF LOTS 1 THROUGH 12, BLOCK 1 AND TRACTS "A-9", "B-9" AND "C-9" OF LINDISFARNE ON FISHER ISLAND SECTION 9,
AS RECORDED IN PLAT BOOK 149, PAGE 86 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY,
FLORIDA, TOGETHER WITH A PORTION OF UNSUBDIVIDED SECTION 10, TOWNSHIP 54 SOUTH, RANGE 42 EAST
CITY OF MIAMI BEACH, MIAMI-DADE COUNTY, FLORIDA.

PLAT BOOK PAGE
SHEET 2 OF 2

THIS INSTRUMENT WAS PREPARED BY:
LEITER PEREZ & ASSOCIATES, INC.
LAND DEVELOPMENT CONSULTANTS
LAND PLANNERS - ENVIRONMENTAL
ENGINEERS - SURVEYORS

1507 N.W. 103rd ST., SUITE 100, MIAMI, FLORIDA 33157
PHONE: (305) 555-1111 FAX: (305) 555-0411
E-MAIL: OFFICE@LEITERPEREZ.COM, WEBSITE: WWW.LEITERPEREZ.COM
DATE: JULY 2004



SURVEYOR'S LEGEND AND NOTES:

- A. ALL DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.
- B. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.
- C. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.
- D. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.
- E. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.
- F. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.
- G. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.
- H. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.
- I. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.
- J. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.
- K. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.
- L. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.
- M. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.
- N. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.
- O. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.
- P. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.
- Q. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.
- R. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.
- S. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.
- T. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.
- U. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.
- V. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.
- W. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.
- X. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.
- Y. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.
- Z. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.

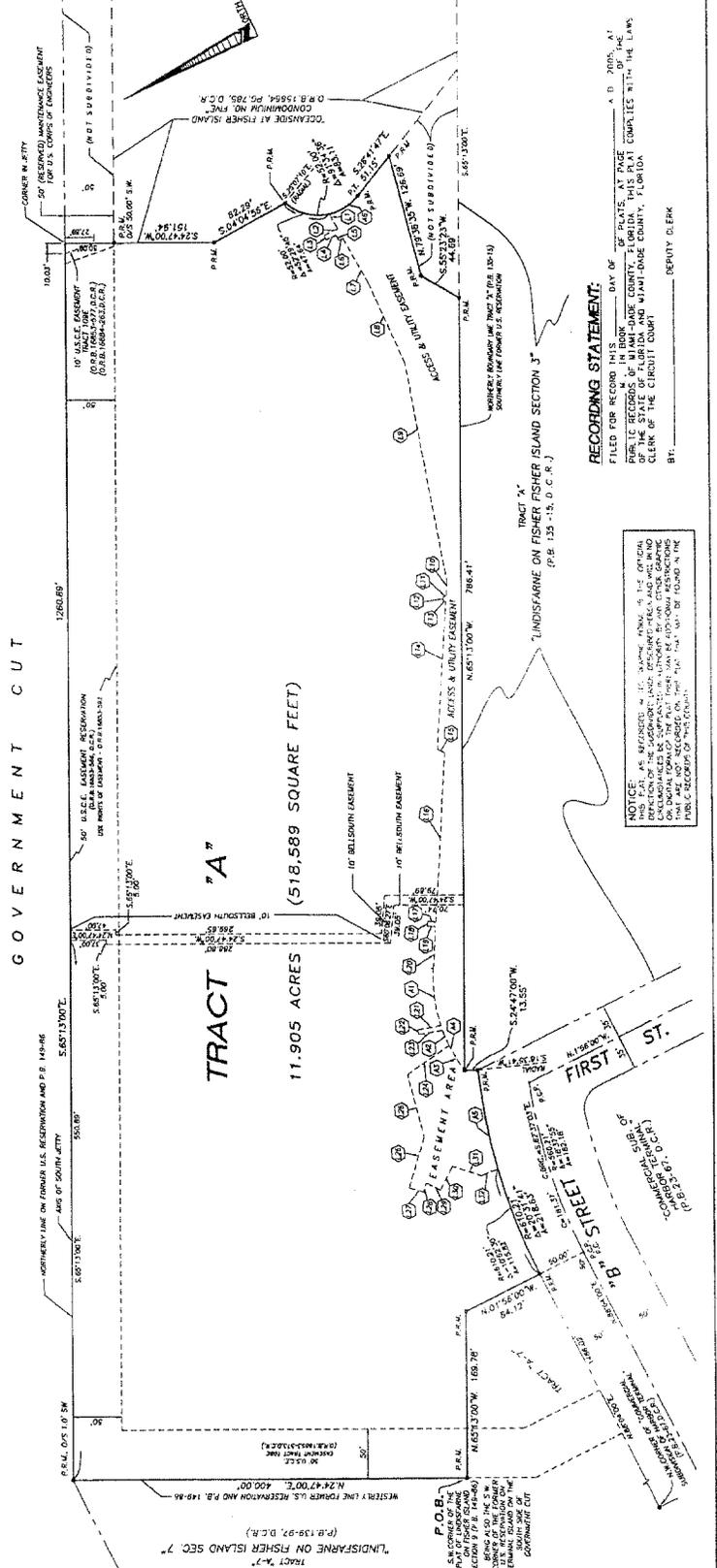
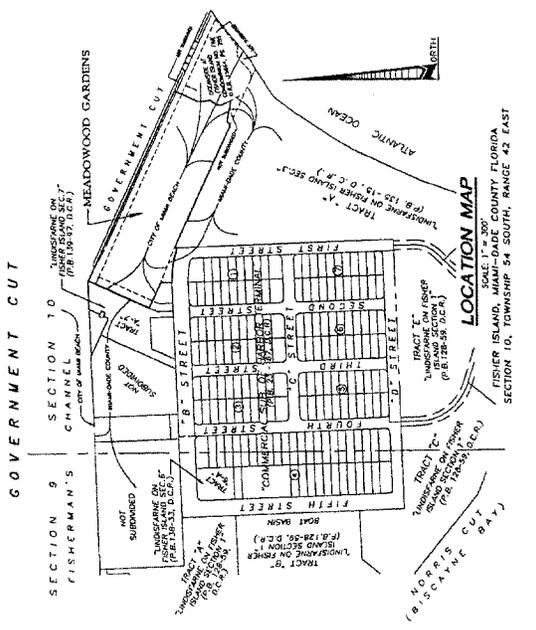
1. THE SURVEYOR HAS REVIEWED THE RECORDS OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, AND HAS FOUND THAT THE RECORDS CONTAIN THE FOLLOWING INFORMATION:
2. THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, SHOW THAT THE FOLLOWING INSTRUMENTS HAVE BEEN RECORDED:
3. THE INSTRUMENTS REFERRED TO IN NOTE 2 ARE:
4. THE INSTRUMENTS REFERRED TO IN NOTE 2 ARE:
5. THE INSTRUMENTS REFERRED TO IN NOTE 2 ARE:

EASEMENT LIMITS

NO.	NAME	LENGTH	COORDINATES
1	1	1.00	1.00
2	2	2.00	2.00
3	3	3.00	3.00
4	4	4.00	4.00
5	5	5.00	5.00
6	6	6.00	6.00
7	7	7.00	7.00
8	8	8.00	8.00
9	9	9.00	9.00
10	10	10.00	10.00
11	11	11.00	11.00
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37	37	37.00	37.00
38	38	38.00	38.00
39	39	39.00	39.00
40	40	40.00	40.00
41	41	41.00	41.00
42	42	42.00	42.00
43	43	43.00	43.00
44	44	44.00	44.00
45	45	45.00	45.00
46	46	46.00	46.00
47	47	47.00	47.00
48	48	48.00	48.00
49	49	49.00	49.00
50	50	50.00	50.00

TABLE OF AREAS

NO.	NAME	AREA
1	1	1.00
2	2	2.00
3	3	3.00
4	4	4.00
5	5	5.00
6	6	6.00
7	7	7.00
8	8	8.00
9	9	9.00
10	10	10.00
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41	41	41.00
42	42	42.00
43	43	43.00
44	44	44.00
45	45	45.00
46	46	46.00
47	47	47.00
48	48	48.00
49	49	49.00
50	50	50.00



RECORDING STATEMENT:
FILED FOR RECORD THIS DAY OF 2004, AT THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA. THIS PLAT COMPLEES WITH THE LAWS OF THE STATE OF FLORIDA AND MIAMI-DADE COUNTY, FLORIDA.
CLERK OF THE CIRCUIT COURT
BY: _____ DEPUTY CLERK

NOTICE:
THIS PLAT, AS REFERRED TO IN NOTE 1, IS THE OFFICIAL PUBLIC RECORD OF THE STATE OF FLORIDA AND MIAMI-DADE COUNTY, FLORIDA. THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, ARE THE OFFICIAL PUBLIC RECORDS OF THE STATE OF FLORIDA AND MIAMI-DADE COUNTY, FLORIDA.

RESOLUTION TO BE SUBMITTED

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**CITY OF MIAMI BEACH
COMMISSION ITEM SUMMARY**



Condensed Title:

A Resolution approving the proposed final plat of the "Apogee," being a portion of the Northwest ¼ of Section 10, Township 54 South, Range 42 East, City of Miami Beach, Miami-Dade County, Florida.

Issue:

Shall the Mayor and City Commission approve the proposed final plat of the "Apogee"?

Item Summary/Recommendation:

On July 28, 2004, a Concept Plan and Settlement Agreement between the City of Miami Beach and East Coastline Development, West Side Partners among others, collectively known as the "Portofino Entities" and succeeded by TRG-Alaska, were approved following public hearings on various items related to the settlement, which also included conveyance and receipt of land by the City and various amendments to the Land Development Regulations and the Comprehensive Plan, collectively. The City's approval of a plat delineating the parcels of land being conveyed is the last required development approval by the City provided for in the Settlement Agreement that will allow consummation of the Settlement Agreement by its parties. In addition to settling all pending lawsuits and releasing the City from all related claims, the City will receive approximately 2 acres of the Alaska Parcel, prime land at the southern tip of Miami Beach along Government Cut, in exchange for the conveyance of approximately 12,829 sf, in aggregate, of City land including a portion of the "Federal Triangle," .

In order to delineate the portions of the "Alaska Parcel" and "Federal Triangle" being conveyed in the settlement agreement, these lands had to be subdivided and recorded in a plat.

A tentative plat for the subdivision of the "Alaska Parcel" and the "Federal Triangle" was presented to the Miami Dade County Plat Committee as the "Apogee" and approved on March 25, 2005, subject to approval by the City of Miami Beach.

Administration recommends adopting the Resolution

Advisory Board Recommendation:

Financial Information:

Source of Funds:		Amount	Account	Approved
<input type="checkbox"/> Finance Dept.	1			
	2			
	3			
	Total			

City Clerk's Office Legislative Tracking:

Robert Halfhill, Public Works 6833

Sign-Offs:

Department Director	Assistant City Manager	City Manager
<i>FLS</i>	<i>[Signature]</i>	<i>[Signature] for [Signature]</i>

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AGENDA ITEM C7L
DATE 5-18-05

CITY OF MIAMI BEACH

CITY HALL 1700 CONVENTION CENTER DRIVE MIAMI BEACH, FLORIDA 33139
www.miamibeachfl.gov



COMMISSION MEMORANDUM

To: Mayor David Dermer and
Members of the City Commission

Date: May 18, 2005

From: Jorge M. Gonzalez
City Manager

A handwritten signature in black ink, appearing to read "Jorge M. Gonzalez for".

Subject: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING THE PROPOSED FINAL PLAT OF THE "APOGEE," BEING A PORTION OF THE NORTHWEST ¼ OF SECTION 10, TOWNSHIP 54 SOUTH, RANGE 42 EAST, CITY OF MIAMI BEACH, MIAMI-DADE COUNTY FLORIDA, AND AUTHORIZING THE APPROPRIATE CITY OFFICIALS TO EXECUTE THE PLAT ON BEHALF OF THE CITY.**

ADMINISTRATION RECOMMENDATION

Adopt the Resolution.

ANALYSIS

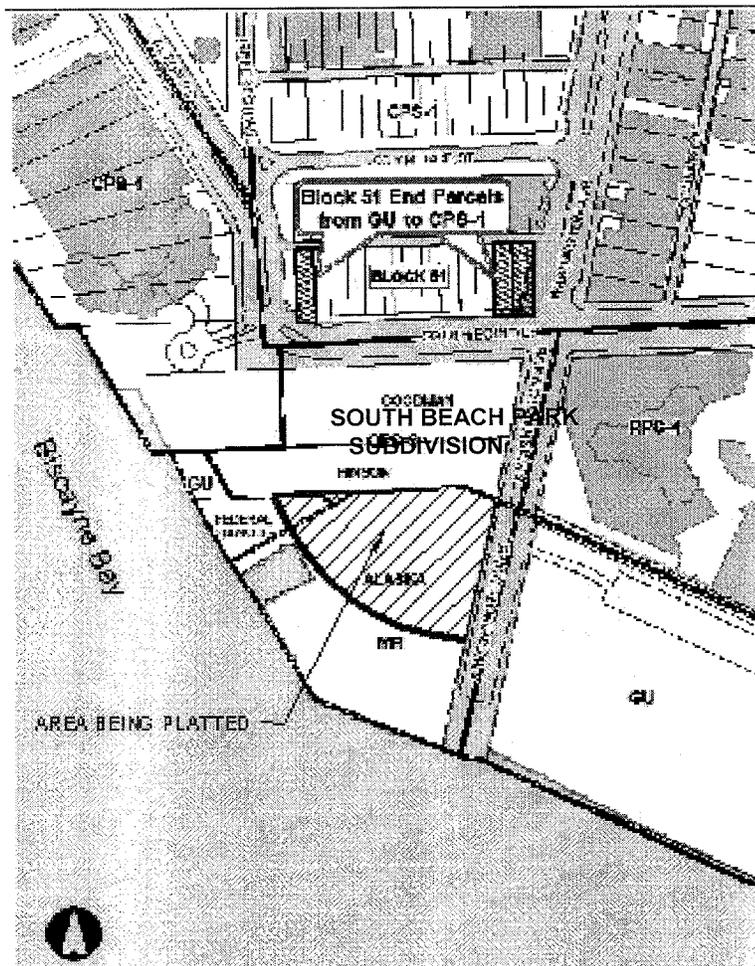
The area south of the South Beach Park Subdivision comprised of the "Alaska Parcel" and the "Federal Triangle" is not platted.

The Mayor and City Commission, through Resolution No.2004-25509, approved a "Term Sheet" in order to settle litigation initiated by East Coastline Development, Ltd. ("East Coastline"), West Side Partners, Ltd. ("West Side"), among others (collectively "the Portofino Entities"), against the City of Miami Beach (the "City") and the Department of Community Affairs. This litigation respectively claimed damages and rights under the Bert J. Harris Private Property Rights Protection Act, other civil rights violations and other relief in Florida Circuit Court Case No. 98-13274 CA 01(30), United States District Court Case No. 01-4921-CIV-Moreno, and Florida Division of Administrative Hearings Case No. 02-3283GM.

On May 26, 2004, the City Commission referred a Concept Plan prepared in furtherance of the settlement to the Design Review Board and Planning Board, for review and recommendation. The City Commission further authorized the Administration to execute owner affidavits for those applications filed pursuant to the Term Sheet that involve City-owned land.

On July 28, 2004, the Concept Plan and Settlement Agreement were approved following public hearings on various items related to the settlement, which also included conveyance and receipt of land by the City and various amendments to the Land Development

Regulations and the Comprehensive Plan, collectively, which were necessary to implement the terms of the Settlement Agreement. The City's approval of the plat is the last required development approval by the City provided for in the Settlement Agreement that will allow consummation of the Settlement Agreement by its parties. In addition to settling all pending lawsuits and releasing the City from all related claims, the City will receive approximately 2 acres of the Alaska Parcel, prime land at the southern tip of Miami Beach along Government Cut, in exchange for the conveyance of approximately 12,829 sf, in aggregate, of City land including a portion of the "Federal Triangle," and end parcels on Block 51, along with the vacation of certain public alley areas.



In order to complete the Settlement, delineate the portions of the "Alaska Parcel" and "Federal Triangle" to be conveyed in the settlement agreement, and for permitting purposes, these lands had to be subdivided and recorded in a plat.

Following the Public Works Department's review and approval of a tentative plat for the subdivision of the "Alaska Parcel" and the "Federal Triangle", the tentative plat was presented to the Miami Dade County Plat Committee as the "Apogee" and approved on March 25, 2005, subject to approval of the final plat by the City of Miami Beach.

The Public Works and Planning Departments, and the City Attorney's Office, have reviewed the proposed final plat of the "Apogee" and following revisions and modifications that were incorporated are recommending the Mayor and City Commission to approve and accept said final plat (see attached Exhibit "A" of the plat) and authorize the appropriate City officials to execute the final plat on behalf of the City.

RECOMMENDATION:

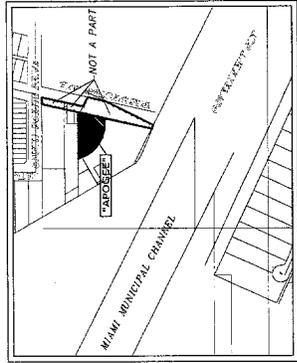
The Administration recommends that the Mayor and City Commission adopt the Resolution approving the proposed final plat of the "Apogee", being a portion of the Northwest ¼ of Section 10, Township 54 South, Range 42 East, and authorizing the appropriate City officials to execute the plat on behalf of the City.

Attachments

JMG\RCM\FHB\FAV\GK\II

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PREPARED BY:
 BISCAYNE ENGINEERING COMPANY, INC. (L.B. 0129)
 529 W. FLAGLER STREET
 MIAMI, FL. 33130
 TEL. (305) 324-7871
 FAX (305) 324-5889
 DRAWING NO. BR-552



KNOW ALL MEN BY THESE PRESENTS:
 THAT THE UNDERSIGNED, THE CITY OF MIAMI BEACH, FLORIDA, A MUNICIPAL CORPORATION OF THE STATE OF FLORIDA, HAVE CAUSED TO BE MADE THE ATTACHED PLAT ENTITLED "APOGEE", THE SAME BEING A SUBDIVISION OF THE FOLLOWING DESCRIBED LANDS:

LEGAL DESCRIPTION:

A PARCEL OF LAND LOCATED IN SECTION 10, TOWNSHIP 54 SOUTH, RANGE 42 EAST, CITY OF MIAMI BEACH, MIAMI-DADE COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
 COMMENCE AT THE NORTHEAST CORNER OF LOT 3, BLOCK 8, "SOUTH BEACH PARK", AS RECORDED IN PLAT BOOK 6 AT PAGE 77 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, THENCE S 87°28'57" W FOR 41.08 FEET TO A POINT ON THE WESTERLY LINE OF SAID LOT 3, THENCE S 87°28'57" W ALONG SAID WESTERLY LINE FOR 111.76 FEET TO THE SOUTHWEST CORNER OF LOT 1 OF SAID BLOCK 8, THENCE S 87°37'54" W ALONG THE SOUTHERLY LINE OF LOTS 1 AND 2 OF SAID BLOCK 8 FOR 208.59 FEET TO THE POINT OF BEGINNING OF THE HEREAFTER DESCRIBED PARCEL OF LAND; THENCE S 57°41'17" W ALONG THE NORTHWESTERLY LINE OF SAID PARCEL OF LAND, NON-TANGENT POINT ON A CIRCULAR CURVE CONCAVE TO THE NORTHEAST AND WHOSE RADIUS POINT BEARS N82°37'08" E, THENCE NORTHWESTERLY ALONG 104.49 FOOT RADIIUS CURVE CONCAVE TO THE NORTHEAST, THENCE S 57°41'17" W FOR 104.49 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 3, THENCE N87°37'54" W ALONG THE WESTERLY LINE OF SAID LOT 3, THENCE N87°37'54" W ALONG SAID WESTERLY LINE OF LOT 3, THENCE S 87°37'54" W FOR 22.28 FEET TO A POINT OF BEGINNING.

AND
 A PARCEL OF LAND LOCATED IN SECTION 10, TOWNSHIP 54 SOUTH, RANGE 42 EAST, CITY OF MIAMI BEACH, MIAMI-DADE COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
 COMMENCE AT THE NORTHEAST CORNER OF LOT 3, BLOCK 8, SOUTH BEACH PARK, AS RECORDED IN PLAT BOOK 6 AT PAGE 77 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, THENCE S 104°2'58" W ALONG THE EASTERLY LINE OF SAID BLOCK 8 FOR 111.76 FEET TO THE SOUTHWEST CORNER OF LOT 1 OF SAID BLOCK 8, THENCE S 87°37'54" W ALONG THE SOUTHERLY LINE OF LOTS 1 AND 2 OF SAID BLOCK 8 FOR 208.59 FEET TO THE POINT OF BEGINNING OF THE HEREAFTER DESCRIBED PARCEL OF LAND; THENCE S 57°41'17" W ALONG THE NORTHWESTERLY LINE OF SAID PARCEL OF LAND, NON-TANGENT POINT ON A CIRCULAR CURVE CONCAVE TO THE NORTHEAST AND WHOSE RADIUS POINT BEARS N82°37'08" E, THENCE NORTHWESTERLY ALONG 104.49 FOOT RADIIUS CURVE CONCAVE TO THE NORTHEAST, THENCE S 57°41'17" W FOR 104.49 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 3, THENCE N87°37'54" W ALONG SAID WESTERLY LINE OF SAID LOT 3, THENCE N87°37'54" W ALONG SAID WESTERLY LINE OF LOT 3, THENCE S 87°37'54" W FOR 22.28 FEET TO A POINT OF BEGINNING.

ALL OF THE FOREGOING CONTAINING 13,392 SQUARE FEET (0.221 ACRES), MORE OR LESS.

IN WITNESS WHEREOF:

TRG-ALASKA I, LTD, A FLORIDA LIMITED PARTNERSHIP HAS CAUSED THESE PRESENTS TO BE SIGNED FOR BY ITS GENERAL PARTNER, TRG-ALASKA I, INC., A FLORIDA CORPORATION, THIS _____ DAY OF _____, 2005

TRG-ALASKA I, LTD, A FLORIDA LIMITED PARTNERSHIP BY ITS GENERAL PARTNER, TRG-ALASKA I, INC., A FLORIDA CORPORATION

WITNESS:
 1. _____ PRINT NAME _____
 _____ PRINT NAME _____
 _____ TITLE _____

ACKNOWLEDGEMENT:

STATE OF FLORIDA
 COUNTY OF MIAMI DADE
 S.S.

I, HEREBY CERTIFY THAT ON THIS DAY PERSONALLY APPEARED BEFORE ME, AN OFFICER DULY AUTHORIZED TO ADMINISTER OATHS AND TAKE ACKNOWLEDGEMENTS, _____, GENERAL PARTNER OF TRG-ALASKA I, LTD, A FLORIDA LIMITED PARTNERSHIP, WHO IS PERSONALLY KNOWN TO ME AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED THE EXECUTION THEREOF TO BE HIS/HER FREE ACT AND DEED AS SUCH OR AS SUCH OF THIS INSTRUMENT AND WHO DID NOT TAKE AN OATH, WITNESS MY HAND AND OFFICIAL SEAL THIS _____ DAY OF _____, 2005

NOTARY PUBLIC, STATE OF FLORIDA
 MY COMMISSION EXPIRES: _____
 PRINT NAME _____
 MY COMMISSION EXPIRES: _____

IN WITNESS WHEREOF:
 THE CITY OF MIAMI BEACH, FLORIDA, A MUNICIPAL CORPORATION OF THE STATE OF FLORIDA, HAS CAUSED THESE PRESENTS TO BE SIGNED FOR AND ON ITS BEHALF BY ITS CITY MANAGER AND ITS CORPORATE SEAL TO BE HEREINTO REFERED AND ATTESTED BY ITS CITY CLERK THIS _____ DAY OF _____, 2005

THE CITY OF MIAMI BEACH, FLORIDA A MUNICIPAL CORPORATION OF THE STATE OF FLORIDA
 BY: _____ CITY CLERK
 _____ CITY CLERK

DAVID DENNER, MAYOR
 BY: _____ MAYOR

ROBERT E. PARCER, CITY CLERK
 ATTEST: _____ CITY CLERK

ACKNOWLEDGMENT:

STATE OF FLORIDA
 COUNTY OF MIAMI DADE
 S.S.

I, HEREBY CERTIFY THAT ON THIS DAY PERSONALLY APPEARED BEFORE ME, AN OFFICER DULY AUTHORIZED TO ADMINISTER OATHS AND TAKE ACKNOWLEDGEMENTS, _____, OWNER AND HOLDER OF THAT CERTAIN MORTGAGE DATED _____ AND RECORDED _____ IN OFFICIAL RECORDS BOOK _____ OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, DOES HEREBY CONSENT TO THIS PLAT AND JOINS IN THE ABOVE DEDICATIONS.

WACHOVIA BANK, NATIONAL ASSOCIATION
 A NATIONAL BANKING ASSOCIATION

ATTEST: _____ BY: _____
 _____ NAME _____ TITLE _____
 _____ NAME _____ TITLE _____

I, HEREBY CERTIFY THAT ON THIS DAY PERSONALLY APPEARED BEFORE ME, AN OFFICER DULY AUTHORIZED TO ADMINISTER OATHS AND TAKE ACKNOWLEDGEMENTS, _____, OWNER AND HOLDER OF THAT CERTAIN MORTGAGE DATED _____ AND RECORDED _____ IN OFFICIAL RECORDS BOOK _____ OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, DOES HEREBY CONSENT TO THIS PLAT AND JOINS IN THE ABOVE DEDICATIONS.

WACHOVIA BANK, NATIONAL ASSOCIATION
 A NATIONAL BANKING ASSOCIATION

ATTEST: _____ BY: _____
 _____ NAME _____ TITLE _____
 _____ NAME _____ TITLE _____

I, HEREBY CERTIFY THAT ON THIS DAY PERSONALLY APPEARED BEFORE ME, AN OFFICER DULY AUTHORIZED TO ADMINISTER OATHS AND TAKE ACKNOWLEDGEMENTS, _____, OWNER AND HOLDER OF THAT CERTAIN MORTGAGE DATED _____ AND RECORDED _____ IN OFFICIAL RECORDS BOOK _____ OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, DOES HEREBY CONSENT TO THIS PLAT AND JOINS IN THE ABOVE DEDICATIONS.

NOTARY PUBLIC, STATE OF FLORIDA
 MY COMMISSION EXPIRES: _____
 PRINT NAME _____
 MY COMMISSION EXPIRES: _____

CITY OF MIAMI BEACH APPROVALS:
 THIS PLAT HAS BEEN REVIEWED BY THE FOLLOWING PROFESSIONAL LAND SURVEYOR AND MAPPER EMPLOYED IN ACCORDANCE WITH SECTION 177.001(1) OF THE FLORIDA STATUTES.
 CERTIFIED THIS _____ DAY OF _____, A.D., 2005

J.A. VARGAS, CITY SURVEYOR
 PROFESSIONAL SURVEYOR AND MAPPER NO. 2916
 STATE OF FLORIDA

THIS PLAT WAS APPROVED BY RESOLUTION NO. _____ PASSED AND ADOPTED BY THE CITY OF MIAMI BEACH, FLORIDA, ON THIS _____ DAY OF _____, A.D., 2005. THIS PLAT WILL NOT RESULT IN A REDUCTION IN THE LEVEL OF SERVICES PROVIDED IN THE AFFECTED PUBLIC UTILITIES OR IN THE LEVEL OF SERVICES PROVIDED IN THE MUNICIPALITY'S COMPREHENSIVE PLAN.

ATTEST: _____ BY: _____
 _____ CITY ENGINEER _____ DIRECTOR OF PLANNING AND ZONING

THIS PLAT IS HEREBY APPROVED FOR RECORD THIS _____ DAY OF _____, A.D., 2005.

BY: _____ ROBERT E. PARCER, CITY CLERK
 _____ DAVID DENNER, MAYOR

MIAMI-DADE COUNTY APPROVALS:
 THIS IS TO CERTIFY THAT THIS PLAT APPEARS TO CONFORM TO ALL OF THE REQUIREMENTS OF CHAPTER 28 OF THE CODES OF MIAMI-DADE COUNTY, FLORIDA. CERTIFIED THIS _____ DAY OF _____, A.D., 2005.

BY: _____ MIAMI-DADE COUNTY PUBLIC WORKS DEPARTMENT DIRECTOR

MIAMI-DADE COUNTY PLAT RESTRICTIONS:
 THAT NO INDIVIDUAL WELLS WILL BE PERMITTED WITHIN THIS SUBDIVISION, EXCEPT FOR SPRINKLER SYSTEMS, SWIMMING POOLS AND/OR AIR CONDITIONERS.
 THAT THE USE OF SEPTIC TANKS WILL NOT BE PERMITTED WITHIN THIS SUBDIVISION.
 REGULATIONS APPLICABLE TO TEMPORARY USE IN ACCORDANCE WITH COUNTY AND/OR STATE REGULATIONS.
 THAT ALL NEW ELECTRIC AND COMMUNICATIONS LINES, OTHER THAN TRANSMISSION LINES, WITHIN THIS SUBDIVISION, SHALL BE INSTALLED UNDERGROUND.

OWNERS PLAT RESTRICTIONS:
 THAT THE UTILITY EASEMENTS AS SHOWN BY DASHED LINES ON THE ATTACHED PLAT, ARE HEREBY RESERVED FOR THE INSTALLATION AND MAINTENANCE OF PUBLIC UTILITIES.

SURVEYOR'S NOTES:
 BEARINGS SHOWN HEREON ARE BASED ON AN ASSUMED MERIDIAN AND ARE REFERENCED TO THE EAST BOUNDARY OF TRACT "A" (SHOWN HEREON), HAVING A BEARING OF S 10°47'36" W.

SURVEYOR'S CERTIFICATE:
 I HEREBY CERTIFY THAT THE ATTACHED PLAT OF "APOGEE" IS A TRUE AND CORRECT REPRESENTATION OF THE LANDS DEPICTED HEREON, AS RECENTLY SURVEYED UNDER MY DIRECTION; ALSO THAT THE PERMANENT REFERENCE MONUMENTS INDICATED HEREON ARE CORRECTLY LOCATED AND COMPLY WITH THE REQUIREMENTS OF CHAPTER 177 (PART 1), FLORIDA STATUTES.

BISCAYNE ENGINEERING COMPANY, INC. (L.B. 0129)
 529 W. FLAGLER ST.
 MIAMI, FLORIDA 33130

ATTEST: HARVEY RUWIK
 CLERK OF THE CIRCUIT COURT

BY: _____ MIKE J. BARTHOLOMEW, PROFESSIONAL SURVEYOR AND MAPPER NO. 5666, STATE OF FLORIDA

RECORDING STATEMENT:
 FILED FOR RECORD THIS _____ DAY OF _____, A.D., 2005, AT _____ M. IN BOOK _____ OF PLATS, AT _____ OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA. THIS PLAT COMPLIES WITH THE LAWS OF THE STATE OF FLORIDA AND MIAMI-DADE COUNTY, FLORIDA.

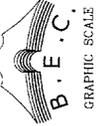
ATTEST: HARVEY RUWIK
 CLERK OF THE CIRCUIT COURT

APOGEE

BEING A PORTION OF THE NORTHWEST 1/4 OF SECTION 10, TOWNSHIP 54 SOUTH, RANGE 42 EAST.
CITY OF MIAMI BEACH, MIAMI-DADE COUNTY, FLORIDA

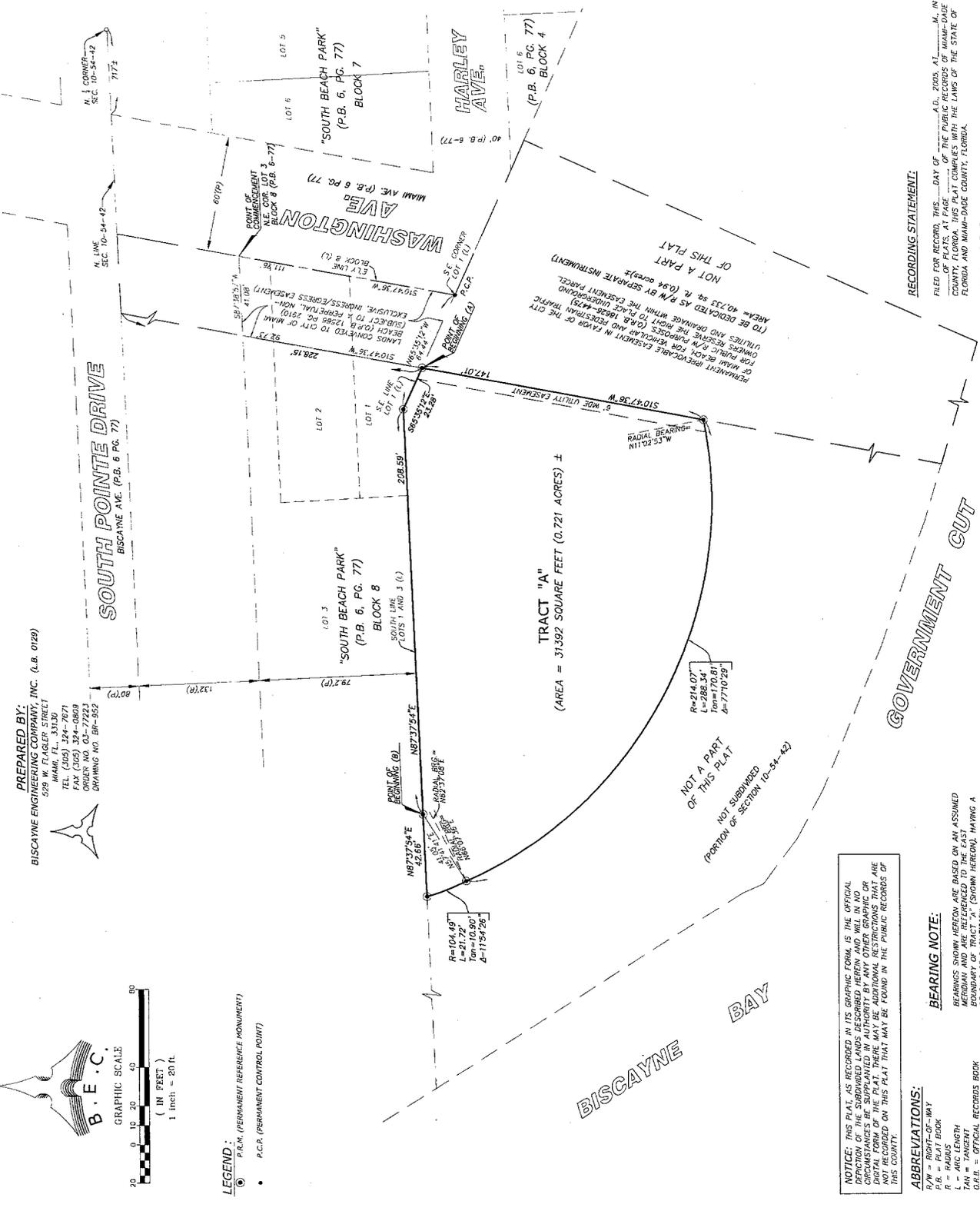
PLAT BOOK _____ PAGE _____
SHEET 2 OF 2

PREPARED BY:
BISCAYNE ENGINEERING COMPANY, INC. (L.B. 0129)
529 W. FLAGLER STREET
MIAMI, FL 33130
TEL. (305) 344-0800
FAX (305) 344-0803
ORDER NO. 03-77223
DRAWING NO. BR-852



GRAPHIC SCALE
(IN FEET)
1 inch = 20 ft.

- LEGEND:**
- P.R.M. (PERMANENT REFERENCE MONUMENT)
 - P.C.R. (PERMANENT CONTROL POINT)



NOTICE: THIS PLAT, AS RECORDED IN ITS GRAPHIC FORM, IS THE OFFICIAL DEFINITION OF THE SUBDIVIDED LANDS DESCRIBED HEREON AND WILL IN NO CIRCUMSTANCES BE SUPPLANTED IN AUTHORITY BY ANY OTHER GRAPHIC OR DIGITAL FORM OF THE PLAT. THERE MAY BE ADDITIONAL RESTRICTIONS OR EASEMENTS REFERRED TO ON THIS PLAT THAT MAY BE FOUND IN THE PUBLIC RECORDS OF THIS COUNTY.

- ABBREVIATIONS:**
- R/W = RIGHT-OF-WAY
 - P.B. = PLAT BOOK
 - R. = RADIAL BEARING
 - TAN = TANGENT
 - O.A.R.E. = OFFICIAL RECORDS BOOK
 - COR. = CORNER
 - P.C. = PLAT BOOK
 - M.D. = MIAMI-DADE COUNTY RECORDS
 - (L) = LEGAL INFORMATION
 - (R) = RECORD INFORMATION
 - (P) = PLAT INFORMATION

BEARING NOTE:
BEARINGS SHOWN HEREON ARE BASED ON AN ASSUMED MERIDIAN AND ARE REFERENCED TO THE EAST BOUNDARY OF TRACT "A" (SHOW HEREON) HAVING A BEARING OF S10°17'36" N.

RECORDING STATEMENT:

FILED FOR RECORD, THIS DAY OF _____, 2005, AT _____, IN BOOK _____ OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA. THIS PLAT COMPLES WITH THE LAWS OF THE STATE OF FLORIDA AND MIAMI-DADE COUNTY, FLORIDA.

ATTEST: HARLEY BURN
CLERK OF THE CIRCUIT COURT

BY: _____ DEPUTY CLERK

F:\SURVEY\PROJECTS\7700\97223\97223\PLAT-REVISED-28-05.dwg 4/29/2005 10:28:09 AM EST

EXHIBIT "A"

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING THE PROPOSED FINAL PLAT OF THE "APOGEE," BEING A PORTION OF THE NORTHWEST ¼ OF SECTION 10, TOWNSHIP 54 SOUTH, RANGE 42 EAST, CITY OF MIAMI BEACH, MIAMI-DADE COUNTY FLORIDA, AND AUTHORIZING THE APPROPRIATE CITY OFFICIALS TO EXECUTE THE PLAT ON BEHALF OF THE CITY.

WHEREAS, TRG-ALASKA I Inc., as one of the successors of “the Portofino Entities”, owns the “Alaska Parcel” south of the South Beach Park Subdivision, and the City of Miami Beach owns the “Federal Triangle” adjacent to the “Alaska Parcel” ; and

WHEREAS, the Mayor and City Commission, through City of Miami Beach Resolution No.2004-25509, approved a “Term Sheet” in order to settle litigation initiated by East Coastline Development, Ltd. (“East Coastline”) and West Side Partners, Ltd. (“West Side”), among others (collectively “the Portofino Entities”) against the City of Miami Beach and the Department of Community Affairs; and

WHEREAS, on July 28, 2004, a Concept Plan and Settlement Agreement were approved following public hearings on various items related to the settlement, which also included conveyance and receipt of land by the City and various amendments to both the City’s Land Development Regulations and the Comprehensive Plan, collectively, which were necessary to implement the terms of the Settlement Agreement; and

WHEREAS, in order to delineate the portions of the “Alaska Parcel” and “Federal Triangle” to be conveyed in the Settlement agreement, these lands had to be subdivided and recorded in a plat; and

WHEREAS, the City’s approval of the plat is the last required development approval by the City provided for in the Settlement Agreement that will allow consummation of the Settlement Agreement by its parties; and

WHEREAS, a tentative plat for the subdivision of the “Alaska Parcel” and the “Federal Triangle” was presented to the Miami-Dade County Plat Committee as the “Apogee” and approved on March 25, 2005, subject to approval by the City of Miami Beach; and

WHEREAS, the City's Public Works Department, Planning Department and City Attorney's office all have reviewed the proposed plat of the "Apogee" and following revisions and modifications which were incorporated, are recommending that the Mayor and City Commission approve and accept said final plat.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission adopt the Resolution approving, subject to final approval of same by the authorized officials in Miami-Dade County, the proposed final plat of the "Apogee", being a portion of the Northwest ¼ of Section 10, Township 54 south, Range 42 East, City of Miami Beach, Miami-Dade County Florida, together with all the noted dedications and easements therein, and authorizing the appropriate City officials to execute the plat on behalf of the City.

PASSED and ADOPTED this _____ day of _____, 2005

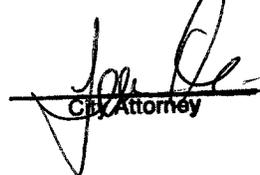
ATTEST:

MAYOR

CITY CLERK

T:\AGENDA\2005\May1805\Consent\ApogeePlatReso.doc

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney

5/13/05

Date

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**CITY OF MIAMI BEACH
COMMISSION ITEM SUMMARY**



Condensed Title:

A Resolution authorizing appropriation of \$406,250 from the Water and Sewer Revenue Series 2000 Bond Fund 424 for Citywide water and sewer engineering services to be provided by Camp Dresser & McKee Inc., under an existing contract.

Issue:

Shall the City Commission appropriate \$406,250 from the Water and Sewer Revenue Series 2000 Bond, Fund 424, for Citywide water and sewer engineering services?

Item Summary/Recommendation:

Resolution No. 2002-25086, was adopted on October 23, 2002 authorizing the Mayor and City Clerk to execute an agreement between the City of Miami Beach and Camp Dresser & McKee (CDM) to provide engineering services for citywide water/sewer improvement projects under Phase II of the Scope of Services RFQ 35-01/02, Task 5 – Additional Design and Inspection Services which involves engineering studies, investigation, design, inspections services, analysis of estimated costs.

In order to plan and execute water and sewer projects citywide, or to obtain engineering information for operational and/or maintenance improvements to the City's water and sewer system, the Public works Department will issue the following work orders under the existing CDM contract during FY 04/05 and FY05/06:

Professional Engineer Services from Camp Dresser McKee.

- 1) Concurrency Management Review\$67,500
- 2) Emergency Response Plan for Pump Stations\$27,300
- 3) Costs of Service Analysis and Implementation\$31,250
- 4) Portable Water Control Valve Evaluation\$17,800
- 5) Large User Agreement with the Satellite Cities\$13,000
- 6) Conduct Water & Wastewater Study.....\$19,400
- 7) Water System Evaluation (Inc. initial SSS)\$75,000
- 8) Wastewater System Evaluation.....\$75,000
- 9) Rate Review.....\$30,000
- 10) Future engineering services\$50,000

Total Funding Requested: \$ 406,250

Administration recommends adopting the Resolution.

Advisory Board Recommendation:

Information:

Source of Funds:	Amount	Account	Approved
<div style="border: 1px solid black; width: 50px; height: 50px; display: flex; align-items: center; justify-content: center;"> </div> Finance Dept.	1	\$ 406,250	Water & Sewer Bond Series 2000
	2		Fund # 424
	3		
	4		
	Total	\$ 406,250	

City Clerk's Office Legislative Tracking:

Robert Halfhill 6833/ Michael Alvarez Extension 6629

Sign-Offs:

Department Director	Assistant City Manager	City Manager

CITY OF MIAMI BEACH

CITY HALL 1700 CONVENTION CENTER DRIVE MIAMI BEACH, FLORIDA 33139
www.miamibeachfl.gov



COMMISSION MEMORANDUM

To: Mayor David Dermer and
Members of the City Commission **Date:** May 18, 2005

From: Jorge M. Gonzalez *JMG*
City Manager

Subject: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING APPROPRIATION OF \$406,250 FROM THE WATER AND SEWER REVENUE SERIES 2000 BOND FUND 424, AND ESTABLISHMENT OF WORK ORDERS FOR THE FIRM CAMP DRESSER & MCKEE (CDM) TO CONDUCT CITYWIDE WATER AND SEWER ENGINEERING SERVICES UNDER PHASE II (TASK 5 ENGINEERING STUDIES, INVESTIGATION, DESIGN, AND ANALYSIS OF ESTIMATED COSTS) OF THE SCOPE OF SERVICES LISTED IN RFQ 35-01/02.**

ADMINISTRATION RECOMMENDATION

Adopt the Resolution.

BACKGROUND

On August 15, 2000, the Water and Sewer Revenue Bonds, Series 2000, provided \$54,310,000 for City projects. The Water and Sewer Capital Program has five main segments; cleaning and repairing water mains throughout the city; replacement of unlined galvanized water mains; replacement and upgrading of water storage facilities and water pump stations; sewer renovation and infiltration mitigation and sewer pump station upgrades. In addition to the program main segments, there is a miscellaneous fund (Fund 424) for unforeseen Water and Sewer projects.

On October 23, 2002, the City Commission passed Resolution No. 2002-25086, authorizing the Mayor and City Clerk to execute an agreement between the City of Miami Beach and Camp Dresser & McKee (CDM) to provide engineering services for citywide water/sewer improvement projects under Phase II of the Scope of Services RFQ 35-01/02 (Task 5 – Additional Design and Inspection Services which task involves engineering studies, investigation, design, inspections services, analysis of estimated costs).

In order to plan and execute water and sewer projects citywide, or to obtain engineering information for operational and/or maintenance improvements to the

City's water and sewer system, the Public works Department will issue the following work orders under the existing CDM contract to provide engineering services for Citywide water and sewer improvement projects:

Professional Engineer Services from Camp Dresser McKee.

- 1) Concurrency Management Review \$67,500
Update of the anticipated sewer flows using the latest data from the City's Planning Department. Primary areas to include from Dade Boulevard to South Pointe Drive.
- 2) Emergency Response Plan for Pump Stations \$27,300
Preparation of a contingency operational plan for emergency situation that could affect the normal operation of the waste water system.
- 3) Costs of Service Analysis and Implementation \$31,250
A study of legal/institutional approaches to adjustments to the total billed to the satellite cities receiving water and waste water services. The research will assist in developing a template for cost allocation for the purpose of updating the "wheeling" charge for recovery of waste water transmission system costs from the several satellite cities.
- 4) Potable Water Control Valve Evaluation \$17,800
To investigate the installation of a pressure regulating valve at each causeway pipeline. These valves would regulate and control the pressure entering the Miami Beach system and allow the City to utilize the four water storage tanks more efficiently. This investigation will determine the best location for each valve in a vault, size the equipment, and determine an operational strategy for each location.
- 5) Large User Agreement with the Satellite Cities \$13,000
The City has Large User Agreements with satellite communities and collects a fee for this service based on a percentage over and above the current charged by the County for bulk treatment of wastewater. The City would like to ensure that the fee being charge is adequate to recover costs for that portion of the system.
- 6) Conduct Water & Wastewater Study \$19,400
Consultant to meet with appropriate County Water and Sewer staff to obtain information concerning source data for the wholesale water and wastewater rates charged to the City. In addition, consultant will obtain data to review cost of service and rate setting among other wholesale customers and retail customers.
- 7) Water System Evaluation (Inc. initial SSS) \$75,000
To conduct a Citywide, by neighborhood, evaluation of the water system and provide data for forecasting future infrastructure growth.

- 8) Wastewater System Evaluation\$75,000
To conduct a Citywide, by neighborhood, evaluation of the waste water system and provide data for forecasting future infrastructure growth.
- 9) Rate Review\$30,000
Consultant to perform and evaluation of water and wastewater rate and compare it to similar size cities nationwide to determine Miami Beach's place in the market and rate structure.
- 10) Future engineering services\$50,000
Services for unplanned projects and requirements to be conducted in FY2005/06.

Total Funding Requested: \$ 406,250

CONCLUSION

The Administration recommends the appropriation of \$ 406,250 from the Water and Sewer Revenue Bond Fund (424) from the Public Works allocation and authorize the establishment of Work Orders to Camp Dresser McKee (CDM) under Phase II of the Scope of Services RFQ 35-01/02 (Task 5 – Engineering studies, Additional Design, Investigation Design, Inspection Services and Analysis of Estimated Costs).

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING APPROPRIATION OF \$406,250 FROM THE WATER AND SEWER REVENUE SERIES 2000 BOND FUND 424, FOR CONSTRUCTION AND MAINTAINENCE PROJECTS AND ESTABLISHMENT OF WORK ORDERS FOR THE FIRM CAMP DRESSER & MCKEE (CDM) TO CONDUCT CITYWIDE WATER AND SEWER ENGINEERING SERVICES UNDER PHASE II (TASK 5 ENGINEERING STUDIES, INVESTIGATION, DESIGN, AND ANALYSIS OF ESTIMATED COSTS) OF THE SCOPE OF SERVICES LISTED IN RFQ 35-01/02.

WHEREAS, on August 15, 2000, the Water and Sewer Revenue Bonds, Series 2000, were issued which allocated \$54,310,000 for City projects; and

WHEREAS, RFQ 35-01/02 was issued by the City on May 3, 2002 requesting Professional Engineering Services for Citywide Water and Sanitary Sewer System Improvement Projects under Phrase II (Task 5—Engineering Studies, Investigation, Design and Analysis of Estimated Costs); and

WHEREAS, on October 23, 2002, the Mayor and City Commission adopted Resolution No. 2002-25086, authorizing the Mayor and City Clerk to execute an agreement between the City of Miami Beach and Camp Dresser McKee (CDM) to provide the Professional Engineering Services pursuant to RFQ 35-01/02; and

WHEREAS, the Public Works Department, Operations Division is requesting appropriation of \$ 406,250 from the Water and Sewer Series 2000 Bond Fund 424 for construction maintenance projects and establishment of work orders for the professional engineering services of Camp Dresser McKee (CDM), as such services were authorized by CMB Resolution # 2002-25086.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND THE CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that appropriation of \$406,250 from the Water and Sewer Revenue Series 2000 Bond Fund 424 is hereby authorized for construction maintenance projects and establishment of work orders for the professional engineering firm of Camp Dresser & McKee (CDM) to conduct Citywide water and sewer engineering services under Phase II (Task 5- Engineering Studies, Investigation, Design and Analysis of Estimated Costs) of the Scope of Services for RFQ 35-01/02.

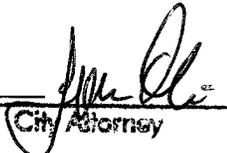
PASSED and ADOPTED this ____ day of _____, 2005

ATTEST:

APPROVED AS TO FORM & LANGUAGE & FOR EXECUTION

CITY CLERK

MAYOR


City Attorney *5/11/05*

**CITY OF MIAMI BEACH
COMMISSION ITEM SUMMARY**



Condensed Title:

A resolution of the Mayor and City Commission of the City of Miami Beach, Florida authorizing the Mayor, or his designee, and the City Clerk to execute a Mutual Aid Agreement with the City of Ft. Lauderdale, Florida, for the purpose of coordinating law enforcement planning, operations, and mutual aid benefit between the City of Miami Beach and the City of Ft. Lauderdale.

Issue:

Shall the City of Miami Beach execute a Mutual Aid Agreement with the City of Ft. Lauderdale that will allow for the sharing of law enforcement resources and the rendering of assistance both during routine and intensive law enforcement situations?

Item Summary/Recommendation:

The Administration recommends the adoption of this resolution that will allow for the sharing of law enforcement resources and the rendering of assistance both during routine and intensive law enforcement situations. The City of Miami Beach and the City of Ft. Lauderdale, because of the existing and continuing possibility of the occurrence of law enforcement problems and other natural and man-made conditions which are or are likely to be beyond the control of personnel, equipment or facilities of the Miami Beach Police Department or the City of Ft. Lauderdale believe that it is beneficial for each to participate in a Mutual Aid Agreement as authorized by Chapter 23, Florida Statutes.

Advisory Board Recommendation:

N/A

Financial Information:

Source of Funds:		Amount	Account	Approved
<div style="border: 1px solid black; width: 40px; height: 40px; display: inline-block;"></div> Finance Dept.	1			
	2			
	3			
	4			
	Total			

City Clerk's Office Legislative Tracking:

Sign-Offs:

Department Director	Assistant City Manager	City Manager

AGENDA ITEM C7N
DATE 5-18-05

CITY OF MIAMI BEACH

CITY HALL 1700 CONVENTION CENTER DRIVE MIAMI BEACH, FLORIDA 33139
www.miamibeachfl.gov



COMMISSION MEMORANDUM

To: Mayor David Dermer and
Members of the City Commission

Date: May 18, 2005

From: Jorge M. Gonzalez
City Manager

Handwritten signature of Jorge M. Gonzalez.

Subject: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA AUTHORIZING THE MAYOR, OR HIS DESIGNEE, AND THE CITY CLERK TO EXECUTE A MUTUAL AID AGREEMENT WITH THE CITY OF FT. LAUDERDALE, FLORIDA, FOR THE PURPOSE OF COORDINATING LAW ENFORCEMENT PLANNING, OPERATIONS, AND MUTUAL AID BENEFIT BETWEEN THE CITY OF MIAMI BEACH AND THE CITY OF FT. LAUDERDALE.**

ADMINISTRATION RECOMMENDATION

Adopt the Resolution.

ANALYSIS

The City of Miami Beach and the City of Ft. Lauderdale, because of the existing and continuing possibility of the occurrence of law enforcement problems and other natural and man-made conditions which are or are likely to be beyond the control, personnel, equipment or facilities of the Miami Beach Police Department or the City of Ft. Lauderdale Police Department believe that it is beneficial for each to participate in a Mutual Aid Agreement as authorized by Chapter 23, Florida Statutes.

The Mutual Aid Agreement will allow for the sharing of law enforcement resources and the rendering of assistance both during routine and intensive law enforcement situations.

This Agreement will take effect when it is signed and will expire on January 1, 2010.

CONCLUSION

It is recommended that the Mayor and City Commission adopt this Resolution and authorize the signing of the Mutual Aid Agreement that will allow for the sharing of law enforcement resources.

JMG/DWD/PS/MG

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA AUTHORIZING THE MAYOR, OR HIS DESIGNEE, AND THE CITY CLERK TO EXECUTE A MUTUAL AID AGREEMENT WITH THE CITY OF FORT LAUDERDALE, FLORIDA, FOR THE PURPOSE OF COORDINATING LAW ENFORCEMENT PLANNING, OPERATIONS, AND MUTUAL AID BENEFIT BETWEEN THE CITY OF MIAMI BEACH AND THE CITY OF FORT LAUDERDALE.

WHEREAS, it is the responsibility of the respective governments of the City of Miami Beach and the City of Fort Lauderdale, Florida to ensure the public safety of their citizens by providing adequate levels of police service to address any foreseeable routine or emergency situation; and

WHEREAS, because of the existing and continuing possibility of the occurrence of law enforcement problems and other natural and man-made conditions which are, or are likely to be, beyond the control of services, personnel, equipment, or facilities of the City of Miami Beach Police Department or the City of Fort Lauderdale Police Department; and

WHEREAS, in order to ensure the preparation of these law enforcement agencies will be adequate to address any and all of these conditions, to protect the public peace and safety, and to preserve the lives and property of the people of the City of Miami Beach and the City of Fort Lauderdale; and

WHEREAS, the City of Miami Beach and the City of Fort Lauderdale have the authority under Chapter 23, Florida Statutes, "Florida Mutual Aid Act," to enter into the attached Mutual Aid Agreement.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor, or his designee, and City Clerk are authorized to execute the attached Mutual Aid Agreement with City of Fort Lauderdale, Florida, for the purpose of coordinating law enforcement planning, operations, and mutual aid benefits between the City of Miami Beach and the City of Fort Lauderdale.

PASSED and ADOPTED this _____ day of _____, 2005.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM & LANGUAGE & FOR EXECUTION:

[Signature]

City Attorney

5-11-05

Date

**CITY OF MIAMI BEACH
COMMISSION ITEM SUMMARY**



Condensed Title:

A Resolution accepting the recommendation of the Miami Beach City Manager and the City Attorney concerning the appointment of Jimmy L. Morales, Esquire, to serve as Chief Special Master, commencing May 30, 2005, and ending December 31, 2005, who shall be authorized to hold hearings and impose fines, liens and other non-criminal penalties against violators of city codes and ordinances, and shall also be authorized to appoint such other special masters as may reasonably be required to conduct the subject hearings; incorporating all other matters set forth within City of Miami Beach City Code Chapter 30, Section 30-37(a) concerning the compensation and duties of the Chief Special Master.

A Resolution accepting the recommendation of the City Manager and City Attorney concerning the appointment of Jimmy L. Morales, Esquire, to serve as Chief Special Master commencing May 30, 2005, and ending December 31, 2005, who shall be authorized to hold administrative hearings regarding appeals from citations for violations of Miami Beach City Code chapters and regarding denials, suspensions, and revocations of occupational licenses and certificates of use, and to appoint such other special masters as may reasonably be required to conduct such hearings pursuant to city ordinances.

A Resolution accepting the recommendation of the City Manager and City Attorney concerning the compensation of the Chief Special Master, establishing a base rate of two hundred and fifty dollars (\$250) per hour, to be paid to the Chief Special Master to perform administrative duties, capped at five thousand dollars (\$5,000), and further provides that if the Chief Special Master sits as one of the special masters hearing cases, his compensation shall be two hundred and fifty dollars (\$250) per hour, capped at one thousand two hundred and fifty dollars (\$1,250) per hearing session.

Issue:

Shall Jimmy L. Morales, Esquire, be appointed for a term beginning May 30, 2005 and ending December 31, 2005?

Item Summary/Recommendation:

Approve the Resolutions.

Advisory Board Recommendation:

N/A

Financial Information:

Source of Funds:		Amount	Account	Approved
<div style="border: 1px solid black; width: 50px; height: 50px; display: inline-block;"></div> Finance Dept.	1			
	2			
	3			
	4			
	Total			

City Clerk's Office Legislative Tracking:

Robert E. Parcher, City Clerk

Sign-Offs:

Department Director	Assistant City Manager	City Manager

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AGENDA ITEM C70
DATE 5-18-05

CITY OF MIAMI BEACH

CITY HALL 1700 CONVENTION CENTER DRIVE MIAMI BEACH, FLORIDA 33139
www.miamibeachfl.gov



COMMISSION MEMORANDUM

To: Mayor David Dermer and
Members of the City Commission

Date: May 18, 2005

From: Jorge M. Gonzalez
City Manager

A handwritten signature in black ink, appearing to read "Jorge".

Subject: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE RECOMMENDATION OF THE MIAMI BEACH CITY MANAGER AND CITY ATTORNEY CONCERNING THE APPOINTMENT OF JIMMY L. MORALES, ESQUIRE, TO SERVE AS CHIEF SPECIAL MASTER, COMMENCING MAY 30, 2005, AND ENDING DECEMBER 31, 2005, WHO SHALL BE AUTHORIZED TO HOLD HEARINGS AND IMPOSE FINES, LIENS AND OTHER NON-CRIMINAL PENALTIES AGAINST VIOLATORS OF CITY CODES AND ORDINANCES, AND SHALL ALSO BE AUTHORIZED TO APPOINT SUCH OTHER SPECIAL MASTERS AS MAY REASONABLY BE REQUIRED TO CONDUCT THE SUBJECT HEARINGS; INCORPORATING ALL OTHER MATTERS SET FORTH WITHIN CITY OF MIAMI BEACH CITY CODE CHAPTER 30, SECTION 30-37(A) CONCERNING THE COMPENSATION AND DUTIES OF THE CHIEF SPECIAL MASTER.

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA ACCEPTING THE RECOMMENDATION OF THE CITY MANAGER AND CITY ATTORNEY CONCERNING THE APPOINTMENT OF JIMMY L. MORALES, ESQUIRE, TO SERVE AS CHIEF SPECIAL MASTER COMMENCING MAY 30, 2005, AND ENDING DECEMBER 31, 2005, WHO SHALL BE AUTHORIZED TO HOLD ADMINISTRATIVE HEARINGS REGARDING APPEALS FROM CITATIONS FOR VIOLATIONS OF MIAMI BEACH CITY CODE CHAPTERS AND REGARDING DENIALS, SUSPENSIONS, AND REVOCATIONS OF OCCUPATIONAL LICENSES AND CERTIFICATES OF USE, AND TO APPOINT SUCH OTHER SPECIAL MASTERS AS MAY REASONABLY BE REQUIRED TO CONDUCT SUCH HEARINGS PURSUANT TO CITY ORDINANCES.

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE RECOMMENDATION OF THE CITY MANAGER AND CITY ATTORNEY CONCERNING THE COMPENSATION OF THE CHIEF SPECIAL MASTER, ESTABLISHING A BASE RATE OF TWO HUNDRED AND FIFTY DOLLARS (\$250) PER HOUR, TO BE PAID TO THE CHIEF SPECIAL MASTER TO PERFORM ADMINISTRATIVE DUTIES, CAPPED AT FIVE THOUSAND DOLLARS (\$5,000), AND FURTHER PROVIDES THAT IF THE CHIEF SPECIAL MASTER SITS AS ONE OF THE SPECIAL MASTERS HEARING CASES, HIS COMPENSATION SHALL BE TWO HUNDRED AND FIFTY DOLLARS (\$250) PER HOUR, CAPPED AT ONE THOUSAND TWO HUNDRED AND FIFTY DOLLARS (\$1,250) PER HEARING SESSION.

ADMINISTRATION RECOMMENDATION

Adopt the Resolutions.

ANALYSIS

Judge Newman has relocated to West Palm Beach, Florida, and has indicated that because of the travel distance, he is no longer able to fulfill the duties of Chief Special Master.

The attached three Resolutions provide for the appointment by the City Commission of Jimmy L. Morales, Esquire. One Resolution appoints Mr. Morales as Chief Special Master for Code Enforcement violations under Chapter 30 of the City Code; the other Resolution appoints Mr. Morales to hear appeals from citations and violations or denials, suspensions, and revocations of occupational licenses and certificates of use pursuant to Chapter 102 of the Miami Beach City Code. The third Resolution establishes a base rate of pay of two hundred and fifty dollars (\$250) up to a maximum cap of five thousand dollars (\$5,000) and establishes a base rate of two hundred and fifty dollars (\$250) up to a maximum cap of one thousand two hundred and fifty dollars (\$1,250) if the Chief Special Master sits as a special master hearing cases.

Mr. Morales is a former Miami-Dade County Commissioner, and was recently a candidate for Miami-Dade County Mayor. He is an active member of the Florida Bar, in good standing.

Mr. Morales has a long history of service to the community, served as Chairman of the Dade Community Foundation, Board Member with the Neighborhood Lending Partners of South Florida, and as a mentor with the 5,000 Role Models of Excellence Project. He has also served on numerous not-for-profit boards, including American Red Cross, Crimestoppers of Miami-Dade County, the East Little Havana Community Development Corporation, Aspira of Florida and the Girl Scout Council of Tropical Florida. Mr. Morales is a graduate of both the Leadership Miami and Leadership Florida Programs. He is the recipient of the Bill Colson Leadership Award for the Leadership Miami program of the Greater Miami Chamber of Commerce. Prior to his elected office, he served for several years as Chairman of the Code Enforcement Board of the City of Miami.

Mr. Morales has the knowledge, skills and abilities, to perform as Chief Special Master. He will serve this City with distinction, and his appointment will best serve the interests of the City. As such, the subject Resolutions should be adopted.

JG:REP:LRM:lm

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RESOLUTION NO. _____

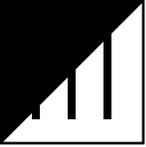
A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE RECOMMENDATION OF THE MIAMI BEACH CITY MANAGER AND CITY ATTORNEY, PURSUANT TO SECTION 30-36 OF THE CODE OF THE CITY OF MIAMI BEACH, CONCERNING THE APPOINTMENT OF JIMMY L. MORALES, ESQUIRE, TO SERVE AS CHIEF SPECIAL MASTER, COMMENCING MAY 30, 2005, AND ENDING DECEMBER 31, 2005, WHO SHALL BE AUTHORIZED TO HOLD HEARINGS AND IMPOSE FINES, LIENS AND OTHER NON-CRIMINAL PENALTIES AGAINST VIOLATORS OF CITY AND COUNTY CODES AND ORDINANCES, AND SHALL ALSO BE AUTHORIZED TO APPOINT SUCH OTHER SPECIAL MASTERS AS MAY REASONABLY BE REQUIRED TO CONDUCT THE SUBJECT HEARINGS; INCORPORATING ALL OTHER MATTERS SET FORTH WITHIN CITY OF MIAMI BEACH CITY CODE CHAPTER 30, SECTION 30-37(A) CONCERNING THE COMPENSATION AND DUTIES OF THE CHIEF SPECIAL MASTER.

WHEREAS, Section 30-2 of the Code of the City of Miami Beach governing "Code Enforcement" provides for an alternative code enforcement system wherein Special Masters are authorized to hold hearings and impose fines, liens and other non-criminal penalties against violators of City and County Codes and Ordinances; and,

WHEREAS, Section 30-36 of the City Code, entitled "Appointment of Chief Special Master," provides for the appointment of a Chief Special Master to fulfill the above referenced duties, with the authority to appoint such other Special Masters as reasonably required to conduct said hearings; and,

WHEREAS, pursuant to Section 30-36 of the City Code, appointment of the Chief Special Master is established upon the City Commission's acceptance by a majority vote of the recommendation for appointment of the City Manager and City Attorney; and,

WHEREAS, the City Manager and City Attorney hereby recommend appointment of Jimmy L. Morales, Esquire, to fill the position of Chief Special Master for the City of Miami Beach; and,



WHEREAS, all other matters set forth within Section 30-37(a) of the City Code with regard to limitation on compensation to be paid to the Chief Special Master, as well as other duties of the Chief Special Master shall remain in effect for a six month term commencing May 30, 2005, and ending December 31, 2005.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby accept the recommendation of the Miami Beach City Manager and City Attorney, pursuant to Section 30-36 of the City Code, concerning appointment of Jimmy L. Morales, Esquire, to serve as Chief Special Master pursuant to Chapter 30 of the City Code, entitled "Code Enforcement;" said Chief Special Master to be authorized to hold hearings and impose fines, liens and other non-criminal penalties against violators of City and County Codes and Ordinances and is further authorized to appoint such other Special Masters as may be reasonably required to conduct the subject hearings; and, that all other matters set forth within Section 30-37(a) of the City Code, concerning the compensation of the Chief Special Master as well as other duties of the Chief Special Master serving as Special Master, are incorporated herein and shall remain in effect for a six month term commencing May 30, 2005, and ending December 31, 2005.

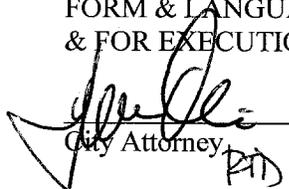
PASSED and ADOPTED this 18th day of May, 2005.

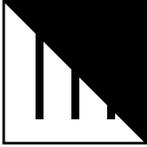
ATTEST:

MAYOR

CITY CLERK

APPROVED AS TO
 FORM & LANGUAGE
 & FOR EXECUTION:


 City Attorney, *PTD* 5/13/05
 Date

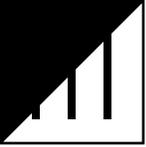


RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA ACCEPTING THE RECOMMENDATION OF THE CITY MANAGER AND CITY ATTORNEY, PURSUANT TO SECTIONS 30-36 AND 102-356 OF THE CODE OF THE CITY OF MIAMI BEACH, CONCERNING THE APPOINTMENT OF JIMMY L. MORALES, ESQUIRE, TO SERVE AS CHIEF SPECIAL MASTER PURSUANT TO CHAPTER 30 OF THE CITY CODE AND TO SERVE AS “DESIGNEE” PURSUANT TO SECTION 102-356 OF THE CITY CODE, COMMENCING MAY 30, 2005, AND ENDING DECEMBER 31, 2005, WHO SHALL BE AUTHORIZED TO HOLD ADMINISTRATIVE HEARINGS REGARDING APPEALS FROM CITATIONS FOR VIOLATIONS OF CITY AND COUNTY CODES AND ORDINANCES, AND REGARDING DENIALS, SUSPENSIONS, AND REVOCATIONS OF OCCUPATIONAL LICENSES, CERTIFICATES OF USE AND PERMITS AS PROVIDED BY THE CITY CODE, AND TO APPOINT SUCH OTHER SPECIAL MASTERS AS MAY REASONABLY BE REQUIRED TO CONDUCT SUCH HEARINGS PURSUANT TO CITY ORDINANCES.

WHEREAS, pursuant to the Code of the City of Miami Beach, upon prior recommendation of the City Manager, the City Commission by a majority vote may appoint a Chief Special Master who shall be authorized to hold hearings and impose fines, liens, and other non-criminal penalties against violations of City Ordinances, and may appoint a “Designee” pursuant to Section 102-356, who shall be authorized to hear appeals from citations for violations of City and County Codes and Ordinances and to conduct hearings regarding denials, suspensions and revocations of occupational licenses, certificates of use and permits as provided by the City Code, and who shall also be authorized to appoint such other Special Masters as may reasonably be required to conduct such hearings pursuant to City Ordinances; and,

WHEREAS, the use of Special Masters under the direction of a Chief Special Master has proven to be an expeditious, cost effective and fair means of adjudicating issues relating to code violations; and,



WHEREAS, the City Manager and City Attorney have recommended the appointment of Jimmy L. Morales, Esquire, as the Chief Special Master and “Designee” for a six month term commencing May 30, 2005, and ending December 31, 2005.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the City Commission hereby accepts the recommendation of the City Manager and City Attorney, and appoints Jimmy L. Morales, Esquire, to serve as Chief Special Master and “Designee,” for a six month term commencing May 30, 2005, and ending December 31, 2005, who shall be authorized to hold hearings and impose fines, liens and non-criminal penalties against violators of City and County Ordinances and who shall be authorized to hear appeals from citations for violations of City and County Codes and Ordinances, and to conduct hearings regarding denials, suspensions and revocations of occupational licenses, certificates of use and permits as provided by the City Code, and who shall also be authorized to appoint such other Special Masters as may reasonably be required to conduct such hearings as may be required pursuant to City Ordinances.

PASSED and ADOPTED this 18th day of May, 2005.

ATTEST:

MAYOR

CITY CLERK

APPROVED AS TO
 FORM & LANGUAGE
 & FOR EXECUTION:

[Signature]
 City Attorney *[Initials]*

5/13/05
 Date

RESOLUTION NO. _____

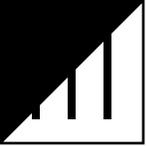
A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE RECOMMENDATION OF THE CITY MANAGER AND CITY ATTORNEY CONCERNING THE COMPENSATION OF THE CHIEF SPECIAL MASTER, ESTABLISHING A BASE RATE OF TWO HUNDRED AND FIFTY DOLLARS (\$250) PER HOUR, TO BE PAID TO THE CHIEF SPECIAL MASTER TO PERFORM ADMINISTRATIVE DUTIES, CAPPED AT FIVE THOUSAND DOLLARS (\$5,000), AND FURTHER PROVIDES THAT IF THE CHIEF SPECIAL MASTER SITS AS ONE OF THE SPECIAL MASTERS HEARING CASES, HIS COMPENSATION SHALL BE TWO HUNDRED AND FIFTY DOLLARS (\$250) PER HOUR, CAPPED AT ONE THOUSAND TWO HUNDRED AND FIFTY DOLLARS (\$1,250) PER HEARING SESSION

WHEREAS, Section 30-2 of the Code of the City of Miami Beach, governing "Code Enforcement," provides for an alternate code enforcement system wherein Special Masters are authorized to hold hearings and impose fines, liens and other non-criminal penalties against violators of City and County Codes and ordinances; and,

WHEREAS, Section 30-36 of the City Code, entitled "Appointment of chief special master," provides for the appointment of a Chief Special Master to fulfill the above-referenced duties, with the authority to appoint such other Special Masters as reasonably required to conduct hearings; and,

WHEREAS, appointment of the Chief Special Master was established upon the Miami Beach City Commission's acceptance by a majority vote of the recommendation for appointment of the City Manager and City Attorney; and,

WHEREAS, the City Commission wishes to limit the compensation to be paid to the Chief Special Master, without further City Commission, authorization at two hundred and fifty dollars (\$250) per hour, up to a maximum of five thousand dollars (\$5,000) per six month term; however, when the Chief Special Master sits as one of the Special Masters hearing cases, his compensation shall be two hundred and fifty dollars (\$250) an hour, with a cap of one thousand, two hundred and



fifty dollars (\$1,250) per hearing session; and,

WHEREAS, there may be instances when the original Master on a case may not be able to serve as Special Master for a rehearing due to a conflict of interest, conflict of scheduling or inability to serve; and,

WHEREAS, in order to provide for the expeditious administration of the Special Master System, it is necessary that the Chief Special Master serve as Special Master for rehearings when the original Special Master is unable to serve.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the City Commission hereby accepts the recommendation of the City Manager and City Attorney concerning the total compensation to be received by the Chief Special Master for his administrative services in the capacity of Chief Special Master, without further City Commission authorization, for service during his six-month term shall be at a rate of two hundred and fifty dollars (\$250) per hour, up to a maximum of five thousand dollars (\$5,000) per six month term; however, when the Chief Special Master sits as one of the special masters hearing cases, his compensation shall be two hundred and fifty dollars (\$250) an hour, with a cap of one thousand, two hundred and fifty dollars (\$1,250) per hearing session.

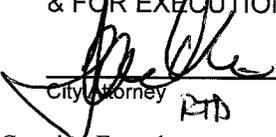
PASSED AND ADOPTED this 18th day of May, 2005.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION:



City Attorney *PTD* Date 5/13/05